NEW JERSEY PROSECUTOR'S MANUAL

(OCTOBER 1988 REVISION)

DEPARTMENT OF LAW AND PUBLIC SAFETY
HONORABLE CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY

DIVISION OF CRIMINAL JUSTICE
DONALD R. BELSOLE
DIRECTOR

COUNTY PROSECUTORS ASSOCIATION OF NEW JERSEY
ALAN A. ROCKOFF
PRESIDENT

INTRODUCTION

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- "A comprehensive statement of policies and practices will foster public respect and confidence in the ability of government to protect its citizens against criminal attack;"
- "Effective enforcement of the criminal law will benefit by the promulgation of uniform standards;"
- "Adoption of a standard office manual [contributes] to uniformity;"
- "Development of the office manual [contributes to] the effective orientation and training of new personnel;" and
- "[There] will be the improvement in the knowledge and technical proficiency of present staff members."

That manual, prepared by a task force of experienced personnel from the Division of Criminal Justice and the County Prosecutors Offices, has been an indispensable tool as the prosecutorial community has grown from a fragmented part-time system to the most efficient and professional criminal justice system in the country.

There have been so many new developments in what we do as Prosecutors, and how we are able to accomplish our goals, that it was decided to publish a revised edition in 1984 and again in 1988. The original manual provided more direction than instruction. We have, collectively, refined the prosecutorial role. We have many experienced Assistant Prosecutors and Deputy Attorneys General who have spent more than ten years making the

system better, and if the system is better, then the public we serve is assured a safer society and we, in turn, have earned the confidence and trust reposed in us.

We note, with pride, that several of the first task force have become Judges of the Superior Court: Cornelius P. Sullivan, David S. Baime, Edwin H. Stern, and Leonard Arnold.

The present, second revision of the manual was supervised by Union County Prosecutor John H. Stamler and Assistant Attorney General James F. Mulvihill (both of whom also supervised the '984 revision). Though many persons assisted in editorial work, Assistant Union County Prosecutor Steven J. Kaflowitz coordinated the submission of articles, proof-reading, and typing in the final form for this second revision.

This book has been arranged so that as new articles are written and adopted by the Prosecutors Association, or revisions in the law require replacement, that can be accomplished with ease.

The persons listed below assisted in writing, editing, or reviewing the materials:

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October, 1988

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October, 1988

CONSTITUTIONAL AND STATUTORY AUTHORITY

Atlantic County Prosecutor Jeffrey S. Blitz
Assistant Prosecutor Betsy Phillips

A. AUTHORITY, POWERS AND DUTIES

The county prosecutor holds a public office created by the New Jersey Constitution. N.J. Const. (1947), Art. 7, §2, par. 1. He is appointed by the Governor with the advice and consent of the Senate for a term of five years or until the appointment and qualification of a successor. Id., N.J.S.A. 2A:158-1. In the absence of constitutional provisions specifying the powers and duties of the prosecutor, the scope of his authority has been defined by the Legislature. Morss v. Forbes, 24 N.J. 341 (1957). These legislative guidelines are set forth at N.J.S.A. 2A:157-1 et. seq., N.J.S.A. 2A:158-a et. seq. and N.J.S.A. 52:17B-77 et. seq.

The primary duty of the prosecutor is to seek justice and not merely convict. State v. Ramseur, 106 N.J. 123, 320 (1987). In pursuit of this goal, he must both refrain from the use of improper methods calculated to produce a wrongful conviction and employ every available legitimate means to obtain a just conviction. Id. However, this does not preclude the prosecutor from making a vigorous and forceful presentation of his case. Id. Thus, when a prosecution is warranted, the prosecutor "shall use all reasonable and lawful diligence for the detection, arrest,

indictment and conviction of offenders against the law." N.J.S.A. 2A:158-5.

B. ATTORNEY GENERAL

As the chief law enforcement officer of the county, the prosecutor generally has exclusive authority to prosecute cases within his jurisdiction. N.J.S.A. 2A:158-4; N.J.S.A. 2A:158-5; Ruvoldt v. Clark, 204 N.J. Super. 438, 442 (App. Div. 1985). However, the Legislature has imposed some degree of supervision on prosecutors through the creation of the Division of Criminal Justice.

The Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et. seq., consolidated many previous statutes dealing with the attorney general's and prosecutor's authority in an attempt to encourage more cooperation and coordination among law enforcement authorities. N.J.S.A. 52:17B-98; In re Ringwood Factfinding Committee, 65 N.J. 512, 528 (1974). The Act requires the Attorney General to consult with, advise and supervise each prosecutor, with a view toward effective and uniform criminal law enforcement in the State. N.J.S.A. 52:17B-103. Pursuant to this goal, the Attorney General may conduct periodic evaluations, or require reports as to any matters pertaining to the duties of the prosecutor's office. N.J.S.A. 52:17B-103; N.J.S.A. 52:17B-114(b). At a minimum, the prosecutor must provide the Attorney General with an annual report. N.J.S.A. 52:17B-111(b).

The Attorney General may supersede the prosecutor in either a prosecution or an investigation. N.J.S.A. 52:17B-106. He shall supersede when requested to do so in writing by the Governor. Id.

He may, in his discretion, supersede when called upon to do so by the grand jury, the Board of Freeholders, the Assignment Judge and whenever he feels the interests of the State will be furthered by his doing so. Id. When he does supersede the prosecutor, he may make all appearances necessary to protect the rights and interests of the State. N.J.S.A. 52:17B-107. The Attorney General may also assume the duties of the prosecutor when the prosecutor in writing requests same, N.J.S.A. 52:17B-105; or when a county has no prosecutor, N.J.S.A. 52:17B-104. It is noted, however, that the prosecutor has the inherent power to designate an acting prosecutor to assume his duties during his absence or disability. State v. Travis, 125 N.J. Super. 1 (Cty. Ct. 1973) aff'd 133 N.J. Super. 326 (App. Div. 1975).

C. GOVERNOR

A prosecutor receives his compensation from the county. The New Jersey Constitution only grants the Governor removal power over a public employee who receives his compensation from the State. N.J. Const. (1947), Art. V, Sec. IV, par. 5. In a practical sense, however, the Governor enjoys the powers to supersede the prosecutor in particular cases and to call upon the Attorney General to intercede. See N.J. Const. (1947), Art. V, Sec. 1, par. 1 and 11 and N.J.S.A. 52:17B-106. He also may remove the prosecutor from office for good cause after a public hearing upon due notice and an opportunity for the prosecutor to be heard in his defense. N.J.S.A. 52:17B-110. Thus, although the prosecutor is not completely divorced from the control of the Governor, the prosecutor is also not under his direct influence.

D. PERSONNEL

To carry out his law enforcement responsibilities, the prosecutor is allowed a staff of assistant prosecutors, detectives and investigators. N.J.S.A. 2A:157-1, et. seq., 2A:158-15, Rolleri v. Lordi, 146 N.J. Super. 297, 305 (App. Div. 1977). The prosecutor has broad discretion concerning the internal administration and allocation of responsibilities in his office. Ruvoldt v. Clark, 204 N.J. Super. 438 (App. Div. 1985), Zamboni v. Stamler, 194 N.J. Super. 598 (Law Div. 1984), aff'd 199 N.J. Super. 378 (App. Div. 1985).

Although the duties of investigators and detectives are identical, detectives enjoy civil service status which prevents them from being discharges without a proper hearing. N.J.S.A. 2A:157-2, Cooper v. Imbrani, 63 N.J. 535 (1973). On the other hand, investigators are not classified in the Civil Service and serve at the prosecutor's pleasure. N.J.S.A. 2A:157-10. The legislative purpose behind this distinction was to provide the prosecutor with wide latitude in the selection of a confidential investigating staff that is removable at his will. Ruvoldt v. Clark, supra at 385, Rolleri v. Lordi, supra at 306. Similarly, the prosecutor has the authority to appoint and discharge assistant prosecutors, and he may transfer them to another position carrying higher pay. Ruvoldt v. Clark, supra at 442.

While the Legislature has fixed maximum numbers for county detectives and investigators, according to class of the county, these limits are not immutable. N.J.S.A. 2A:157-2, N.J.S.A. 2A:157-10, Rolleri v. Lordi, supra at 305. Where a need exists

for additional investigative personnel, the prosecutor may appoint them with the approval of the Assignment Judge. Id. at 306. The number of assistant prosecutors provided by N.J.S.A. 2A:158-15, may be increased with the approval of the Assignment Judge and a resolution by the County Board of Freeholders.

The Board of Freeholders is responsible for funding the prosecutor's office. While the Board has the authority to fix salaries, it may neither fill vacancies nor control expenditures which do not exceed the prosecutor's budget. Ruvoldt v. Clark, supra at 441-442. If the prosecutor's expenditures go beyond the Board's appropriations, he may apply to the Assignment Judge for additional funds. N.J.S.A. 2A:158-7, In re Application of Bigley, 55 N.J. 58 (1969).

E. LIMITATIONS ON DISCRETION

The strength and independence of the prosecutor's office has always been respected and accorded wide deference. State v. Abbati, 99 N.J. 418, 433 (1985). The prosecutor has the discretion to prosecute if probable cause exists or to refrain from prosecution in the absence of good cause. State v. McMahon, 183 N.J. Super. 97, 100 (Law Div. 1981). He may downgrade indictable crimes to disorderly offenses, State v. Stern, 197 N.J. Super. 49 (App. Div. 1984); prosecute under the harsher of overlapping statutes absent a legislative intent to the contrary, State v. States 44 N.J. 285 (1965); or decline to pursue the death penalty or the maximum charge sustainable within a factual situation. State v. Conyers, 58 N.J. 123 (1971), In re Buehrer, 50 N.J. 501 (1967).

While the prosecutor's conduct is presumed to be valid, it is not immune from judicial oversight. State v. McCrary, 97 N.J. 132, 140-142 (1984). In appropriate circumstances, the court will review his actions for arbitrariness or an abuse of discretion. In Re Ringwood Factfinding Committee, 65 N.J. 512 (1974). Dismissal of an indictment is a proper remedy when the prosecutor has abused his discretion. State v. Abbati, supra at 434. Moreover, even absent a finding of abuse of discretion, the prosecutor may be prevented from continuing a prosecution after a mistrial if this decision offends fundamental fairness and the administration of justice. Id. at 430.

F. DUTY OF DISCLOSURE

Pursuant to the Due Process Clause of the Fourteenth Amendment, the prosecutor is required to disclose any evidence material favorable to a defendant's clause, even if it only concerns the credibility of a State's witness. State v. Carter, 85 N.J. 300 (1981), Brady v. Maryland, 373 U.S. 83 (1963). This continuing duty of disclosure applies regardless of whether defendant has requested such information. United States v. Agurs, 427 U.S. 97 (1976). Moreover, the good faith of the prosecutor in failing to disclose exculpatory evidence is irrelevant, and he is charged with knowledge of all evidence in his file, even if it has been overlooked. State v. Carter, 91 N.J. 86, 111 (1982).

As an officer of the court, the prosecutor also has an obligation of candor toward the tribunal. RPC 3.3, State v. Murphy, 110 N.J. 20, 33 (1988). Accordingly, he has the responsibility to bring to the attention of the presiding judge

any evidence of prejudice or bias that could affect the impartial deliberation of a grand jury. Id. The violation of this duty will result in the dismissal of an indictment prior to trial. Id. at 36.

G. QUALIFIED IMMUNITY

Under federal law, a state or county prosecutor is absolutely immune from liability for alleged §1983 civil rights violations committed in the course of "initiating a prosecution and ... presenting the State's case. Hayes v. Mercer County, 217 N.J. Super. 614, 619-620 (App. Div. 1987), Imbler v. Pachtman, 424 U.S. 409, 431 (1976). However, it is uncertain whether this absolute immunity extends to the prosecutor's administrative and investigative responsibilities that do not touch upon his role as an advocate. Id. On the other hand, the prosecutor's investigative staff, even when acting under his direction, are only entitled to qualified immunity under federal law for official actions taken in objective good faith. Hayes v. Mercer County, supra at 620-621, Ross v. Meagan, 638 F.2d 646, 649 (3rd Cir. 1981).

Under state law, the prosecutor is generally entitled to immunity for his official conduct by the New Jersey Tort Claims Act. N.J.S.A. 59:3-8. However, this immunity is not absolute, and the prosecutor remains liable for conduct which is outside the scope of his employment, or which constitutes a crime, actual fraud, actual malice or willful misconduct. N.J.S.A. 59:3-14(a).

The Tort Claims Act also provides investigators with qualified immunity for acts undertaken in objective good faith in

the execution and enforcement of any law. N.J.S.A. 59:3-3, Hayes v. Mercer County, supra at 622-623. However, if a law enforcement officer is charged with false arrest or false imprisonment, legal justification or probable cause are the only defenses available to a public employee who would otherwise be entitled to good-faith immunity. Id. Moreover, an investigator would lose the qualified immunity should his conduct amount to a crime, actual fraud, actual malice or willful misconduct. N.J.S.A. 59:3-14(a), Hayes v. Mercer County, supra at 623.

CODE OF ETHICS

Atlantic County Prosecutor's Office

A. PURPOSE

This Code of Ethics is formulated to provide specific standards to govern and guide the personal conduct of the staff of the Prosecutor in order that public confidence in the propriety of their activities may be preserved.

B. SCOPE

This Code is applicable to every person who is either employed by or assigned to the Prosecutor. It is deemed to have been accepted as a condition of employment by an individual on the staff of the Prosecutor.

C. NOTICE

No person shall be employed by the Prosecutor without first being furnished a copy of this Code which shall constitute notice of its provisions.

D. CONFLICTS OF INTEREST

1. Personal Interest or Activity which conflicts with Public Interest: No employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity which is in conflict with the proper discharge of his duties in the public interest.

2. Personal Activity Subject to Government Regulation: No employee shall engage directly or indirectly in any business, profession, trade or occupation which is subject to licensing or regulation by any agency of state, county or municipal government without promptly filing notice of such activity with the Prosecutor.

3. Securing Unwarranted Privilege: No employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself and others.

4. Financial Interest which Impairs Independent Judgment: No employee shall act in his official capacity in any manner wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment.

5. Personal Undertaking which Impairs Independent Judgment: No employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to impair his objectivity and independence of judgment in the exercise of his official duties.

6. Gift which Appears to Influence Duties: No employee shall solicit, receive or accept any gratuity, gift or other thing of value, either directly or indirectly, under circumstances from which it might reasonably be inferred that such gift, gratuity, or other thing of value was offered or given for the purpose of influencing him in the discharge of his official duties.

7. Personal Activity which Appears to Violate Public Trust: No employee shall knowingly and without justification act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as an employee of the Prosecutor.

8. Expenses while Attending Meeting, Conferences or Conventions: No employee shall attend any conference, convention

or meeting relating to the duties and responsibilities of his position at the expense of any organization or agency other than that of the Prosecutor, or an agency approved by the Prosecutor.

COMMENT

The first seven of the eight sections above substantially reflect those required in the Code of Ethics mandated for all executive branch state agencies in N.J.S.A. 52:13D-23(e)(1) to (7).

E. CASINO RESTRICTIONS

1. Credit: No employee shall solicit, establish, attempt to establish, receive or accept any financial credit privileges for the purpose of gambling, individually or through or on behalf of another person, with any casino licensee in New Jersey or from any person acting in its behalf.

2. Complimentaries (Optional): No employee shall solicit or accept directly or indirectly from any casino licensee in New Jersey or its agent any complimentary goods or services, gratuity, favor, gift, guestroom accommodation, meal, admission or other thing of value without providing full and just compensation therefor.

3. Complimentaries (Minimum Standard): Every employee who accepts complimentary goods or services, other than beverages regularly served and consumed by the public within a casino or benefits regularly obtained by the public in conjunction with an organized bus trip, from a casino licensee in New Jersey or its agent, shall file a written report with the Prosecutor within two

working days setting forth the complimentary accepted and the circumstances involved.

Comment

Sections 1 and 3 were initially approved by the Association on November 14, 1983. Sections 2 and 4 are new proposals and are optional.

F. OUTSIDE EMPLOYMENT

1. All Employees: No employee shall engage in any outside employment without the prior written approval of the Prosecutor.

2. Assistant Prosecutors: No assistant prosecutor shall engage in any other gainful employment (a) unless he has obtained the prior written approval of the Prosecutor for a part-time teaching position at an institute of higher education in a program of law enforcement education (N.J.S.A. 2A:158-15.1, 15.1a and 15.20 or (b) unless he is serving as a part-time assistant prosecutor.

G. CONFIDENTIAL INFORMATION

No employee or person assigned to or retained by the Prosecutor shall disclose to any non-law enforcement person any information concerning the operations, investigations or other business of the Prosecutor not generally available to members of the public unless such disclosure is expressly authorized by the Prosecutor.

H. PUBLIC STATEMENTS

Because of their unique role and their extraordinary power to undermine the efficacy of the criminal justice system, no assistant prosecutor or former assistant prosecutor who is or has

been associated with a criminal prosecution shall, prior to the final resolution thereof, make any extra-judicial statement for public dissemination reasonably likely to interfere with the criminal proceedings. RPC 3.6, 8.4(d), In Re Rachmiel, 90 N.J. 646 (1982), State v. Biegenwald, 106 N.J. 13, 38 (1987).

I. PERSONS ACCUSED OF CRIME

1. Bail: No employee shall provide bail or bail costs to any person accused of a crime without prior approval of the Prosecutor.

2. Character Witness: No employee shall testify as a character or reputation witness on behalf of any person accused of a crime without the prior approval of the Prosecutor.

3. Recommending Defense Counsel: No employee shall recommend, contact or assist in obtaining counsel to represent any person accused of a crime.

J. PERSONAL CONSIDERATION AND ATTORNEY ETHICS

1. Personal Considerations: No employee in making any judgment in his official capacity shall consider his personal or political advantage, or his personal reputation.

2. Disciplinary Rules: All assistant prosecutors are subject to the Code of Professional Responsibility governing attorneys as adopted by the New Jersey Supreme Court. R. 1:14 and RPC 1.1 to 8.5.

K. CONSULTANTS

The Prosecutor shall insure that no conflict of interest or appearance of conflict is created when engaging any consultant,

contract agent, independent contractor or other person to perform a temporary service for a specific purpose or period of time.

L. POLITICAL ACTIVITY

1. Prohibition: No employee may engage in any political activity at any time except that he (a) may make political contributions and purchase tickets to political affairs in an aggregate annual amount not exceeding $300, provided a written receipt is obtained, and (b) may attend affairs held for political purposes if he is not seated on the dais or does not otherwise unnecessarily call attention to his presence there.

2. Examples: "Political activity" as used herein shall include:

a. Any candidacy for elective public or political office;

b. Any holding of an officer in or employment with or working actively on behalf of any political party, organization or club;

c. Any participation in any political campaign;

d. Any exhibiting of signs concerning political candidates on one's person, vehicle or home;

e. Any use of one's name in connection with any political material;

f. Any sale of distribution of tickets to any affair held for any political purpose whatsoever (this prohibition includes but is not limited to any affair held by or on behalf of any candidate for or incumbent of any public or political office or by or on behalf of any political party, organization or club);

g. Any soliciting or accepting of any contribution either directly or through a third person to or on behalf of any political purpose whatsoever;

h. Any use of one's official influence to modify the political action of another;

i. Any working at the polls during election time or as an election official at any time; and,

j. Any other political activity not expressly listed herein.

Comment

Since 1964, a Prosecutor, assistant prosecutor and legal assistant have been prohibited from elective public office, from positions with a political party or club and from authorizing the use of their name in political materials. N.J.S.A. 2A:158-21. See Fitzgerald v. Mathesius, 136 N.J.Super. 93 (Law Div. 1975).

A classified county employee is, by Civil Service Commission regulation, prohibited from political activities which impair his usefulness in his official position, from political activity during hours of employment and from the use of his position to control or modify the political action of another. N.J.A.C. 4:1-21.3, 2.1 and 21.5. As to state classified employees, see N.J.S.A. 11:17-2 and 18-1, the violation of which constitutes a fourth-degree crime. N.J.S.A. 2C:1-4d.

Since 1975, a fourth degree-crime occurs where "a holder of a public office or position shall demand payment or contribution from another holder ... for the campaign purposes of any candidate or for the use of any political party." N.J.S.A. 19:34-42, 42.2

and 35.

The standards regarding political activity referred to above are intended to be minimum standards. Some Prosecutors have imposed more restrictive standards prohibiting all political contributions of any type and also prohibiting the attendance at any political affair.

M. CHARITABLE, CIVIC, RELIGIOUS, PROFESSIONAL ACTIVITY AND OTHER PUBLIC SERVICE

1. Purpose: This policy attempts to strike a balance between allowing voluntary service for the good of the community and maintaining the appearance of independent judgment and freedom from an unnecessary outside influence. It attempts to avoid any unnecessary appearance that the public office is being used for other than a proper law enforcement purpose and any unjustified possibility of creating a conflict of interest between the official duties of the employee and his outside activity.

2. Charitable/Professional Organization: No employee shall serve as an officer, trustee, director or in a similar capacity in any charitable, civic, religious or professional organization, association or committee unless the prior written approval of the Prosecutor has been obtained.

3. Public Body: No employee shall serve on any public body or in any governmental position unless the prior written approval of the Prosecutor has been obtained.

4. Use of Title/Name: No employee shall use his official title or his name in any written materials issued on behalf of any charitable, civic, religious or professional organization,

association or committee or any public body.

5. Fundraising Activity: No employee shall engage in any fundraising activity whatsoever without the prior written approval of the Prosecutor.

Comment

Law enforcement officer associations have been strictly limited in their fundraising activities since prior to 1954 by N.J.S.A. 2A:170-20 through 20.12 which imposes strict control and accountability requirements and limits both the method and the persons who may be involved in such fundraising. Section D 5 of this Code provides that no employee shall undertake any service, whether compensated or not, which might reasonably be expected to impair the independence of his judgment. See also Section D 1.

The furtherance of the interests of such outside organization or public body may not always further the public interest from the detached perspective of the Chief Law Enforcement officer of the County; especially where the activity is within the County and involves either (a) charitable fundraising or (b) a public body with authority to grant any approval or license. The Prosecutor may come under an obligation to review transactions within either category.

N. RESTRICTION AS CRIMINAL DEFENSE ATTORNEY (POST-EMPLOYMENT)

1. Personal Restriction (Six Months) (All Matters): No former assistant prosecutor shall appear in any criminal matter in any capacity against the State in the County in which he served for a period of six months from the date of termination of his

public employment. This proscription does not foreclose such appearances by a law firm with which the former assistant prosecutor is associated. In re Advisory Opinion #361, 77 N.J. 199, 206 (1978).

2. Personal and Law Firm Restriction (Permanent) (Particular Matters): No former assistant prosecutor nor law firm with which he is associated shall represent any person in any matter (a) in which he participated to any extent while an assistant prosecutor including but not limited to any aspect of investigation, trial preparation or trial; (b) for which he had any responsibility, whether exercised or not; or, (c) about which he became aware of any facts or other information. In re Advisory Opinion #361, 77 N.J. 199, 207 (1978).

O. PRIVATE REPRESENTATION BY A LOCAL DEFENSE ATTORNEY

No assistant prosecutor, detective or investigator shall privately retain or be represented in his personal legal affairs by any attorney who maintains an active criminal practice within the County. Advisory Opinion #496, 109 N.J.L.J. 377 (May 6, 1982).

P. TESTIMONY IN CIVIL ACTIONS

1. Fact Testimony: No employee shall testify in any civil action as a fact witness without the prior approval of the Prosecutor, or without prior notification to the Prosecutor when the testimony is given pursuant to an order of a court.

2. Expert Opinion: No employee shall testify in any civil action as to his expert opinion on any matter without the prior approval of the Prosecutor. The Prosecutor shall determine

whether a fee shall be remitted to the County for such expert testimony by the litigant seeking to offer same. See Hull v. Plume, 131 N.J.L. 511, 516 (E and A 1944); Stanton v. Rushmore, 112 N.J.L. 115, 116 (E and A 1933); Braverman v. Braverman, 21 N.J. Super. 367 (Ch. Div. 1952); and N.J.S.A. 52:13D-24.

Q. INTERAGENCY RECRUITING

No Prosecutor or his representatives should openly solicit for employment persons employed by another Prosecutor or the Division of Criminal Justice. Whenever an employee of a Prosecutor or the Division expresses interest in such an employment, the employee should notify his current employer of such interest prior to further serious consideration of his application by such prospective employer.

R. CONSTRUCTION

In the event that any person is in doubt as to the applicability of the provisions of this Code to any particular situation in which such person is or may become involved, he shall fully disclose this fact and its circumstances to the Prosecutor.

S. REVISION DATE

The initial Code was approved by the County Prosecutor Association on January 24, 1980. It was revised on November 14, 1983 to add the section on casino restrictions. The current revision was approved by the Association on May 23, 1984.

T. EFFECTIVE DATE

This Code shall become effective immediately upon approval by the Prosecutor.

U. SOURCES

A variety of sources have been cited throughout this Code. It is noted that the New Jersey Conflicts of Interest Law, which applies primarily to state employees within the executive branch and took effect on January 11, 1972, is a relevant point of reference. N.J.S.A. 52:13D-12 through 27. The Rules of Professional conduct adopted by the New Jersey Supreme Court govern the conduct of all New Jersey attorneys. R. 1:14 and RPC 1.1 to 8.5.

PROPER TRIAL CONDUCT

A. PUBLIC CONFIDENCE

The Prosecutor is an officer of the Court, an attorney, a public official and a law enforcement officer. He holds an important position in the community and the manner in which he conducts his practice should engender respect. If he acts unfairly or illegally, he demeans himself and his office. In short, the conduct of a Prosecutor should be above reproach.

The Rules of Professional Conduct govern the conduct of all attorneys. R. 1:14. The Prosecutor, as an attorney, is subject to these Rules. It is incumbent upon him to be familiar with them and apply them in everyday practice. Considering his critical function in the criminal justice system, a Prosecutor has a greater obligation to abide by them than other attorneys. This ethical responsibility is implicit in his dual role as an administrator of justice and an advocate. The oft-quoted maxim that a Prosecutor must seek justice and not to merely convict should be regularly demonstrated and not relegated to the status of a passive platitude. See State v. Farrell, 61 N.J. 99, 104 (1972).

The responsibilities and duties of the Prosecutor have greatly expanded during the past decade. His role involves much

more than the mere ministerial processing of cases for trial. In many ways, he acts in an almost judicial fashion and determines not only whether a particular defendant has committed an offense but also whether he should be charged or diverted to a rehabilitative program. These decisions require the highest competence in legal skills, fairness and impartiality.

The Prosecutor must avoid even the appearance of professional impropriety. To develop and maintain public confidence in the criminal justice system, it is necessary to avoid not only professional impropriety but also its appearance. Both the appearance of and reality of the integrity of the Prosecutor is essential to the preservation of a free and democratic society.

B. TRIALS

The propriety of prosecutorial conduct is most viable in relation to the performance of official duties. In this regard, the trial of a criminal case presents many situations in which it is necessary to consider whether actions are ethical or otherwise proper. Many trial practices, while not in themselves unethical, raise grave questions of propriety and may seriously prejudice the ability to achieve a fair and successful prosecution.

C. DECORUM

A Prosecutor should support the authority of the Court and the dignity of the courtroom by strict adherence to rules of decorum and an attitude of professional respect toward the judge, opposing counsel, witnesses, defendant, jurors and others. Proper conduct includes but is not limited to addressing the Court rather than opposing counsel on all matters relating to the case, refrain

from injecting personalities into the proceeding, complying with all orders and directives of the Court, making objections in a respectful manner and being punctual in attendance in court and submission of all papers.

D. JURORS

A Prosecutor may not communicate privately with persons summoned for jury duty or impaneled as jurors concerning the case prior to or during the trial and should avoid both the appearance and the reality of any such communication. He should treat jurors with deference and respect but avoid undue solicitude for their comfort or convenience. Following the verdict, he may not communicate with jurors concerning the case without approval from the Court.

E. WITNESS SEQUESTRATION

The preparation of witnesses occurs both before and after jury selection and may continue through the testimonial portion of the case. In most criminal cases, an order of sequestration will be requested and entered by the Court. Where this occurs, the Prosecutor must exercise extreme care to avoid both the appearance and the reality of a violation of the order. When such an order exists, it is improper to interview witnesses in the presence of each other and the separation of prospective witnesses must be accomplished prior to interview.

Interviews, whenever possible, should be conducted in private and out of the view of jurors. State v. Allman, 122 N.J. Super. 137 (App. Div. 1973). The interview of a witness during a recess when that witness is on the stand should also be avoided.

Witnesses should be sufficiently prepared to testify so as to avoid the need to discuss anything related to the case during a break in their testimony. They should be instructed at the time of the pretrial interview as to the existence and meaning of the sequestration order and that their conversations with the Prosecutor concerning the case should be admitted to defense counsel.

F. OPENING

A Prosecutor generally utilizes his opening to outline to the jury the nature of the charges against the defendant. Different techniques are employed in opening by individual Prosecutors. The general guidepost in determining the propriety of referring to potential evidence is the good faith belief that such evidence will be admitted. State v. McAllister, 41 N.J. 342 (1964). While opinions differ, it is submitted that a Prosecutor should generally refrain from mentioning a confession in his opening unless a prior determination of its admissibility has been made. Though the good faith standard might allow such mention, caution dictates that such reference not be made. A Prosecutor should never refer to a grand jury determination to indict as grounds for the trial jury to believe the defendant guilty. This type of opening remark is totally improper and will often lead to a mistrial or reversal on appeal.

G. EVIDENCE GENERALLY

A Prosecutor may not knowingly for the purpose of bringing an inadmissible matter to the attention of the judge or jury, offer inadmissible evidence, ask legally objectionable questions or make other impermissible comments or arguments in the presence of the

judge or jury. He may not display any tangible evidence until testimony is introduced concerning it not tender such evidence for identification or admission unless he has reasonable grounds to believe that it is admissible. Where there is a doubt, it should be resolved by an offer of proof and a request for a ruling.

H. TESTIMONY

A Prosecutor should interrogate witnesses fairly, objectively and with due regard for the dignity and legitimate privacy of the witness. He should not seek to intimidate or humiliate unnecessarily. He should not misuse the power of cross-examination or impeachment to discredit or undermine the testimony of a witness known to be testifying truthfully. He may not call a witness who he knows will claim a valid privilege for the purpose of impressing upon the jury the refusal of the witness to testify.

Impropriety must be avoided in asking a question which requires an answer dealing with an out of court identification or confession. If the defense fails to request voir dire hearing on admissibility, the Prosecutor may be tempted to delve into the area without giving the defense a last chance to object. Often the defense, being unaware of the exact sequence of questions to posited, may be caught off guard. While a practical advantage could here be gained, it is submitted that the proper procedure is to request a side bar conference, inform the Court on the record of the intention to enter into such questioning and ask defense counsel through the Court whether a hearing is requested. Rule 8, N.J. Rules of Evidence. This method avoids surprise and prevents

testimony from reaching the jury which may prejudice the case if later determined to be inadmissible.

It is not correct to ask questions which counsel knows to be improper in themselves or which call for clearly improper inadmissible answers. It is highly improper to question a defendant as to his refusal to make statements to the police or Prosecutor prior to trial. State v. Deatore, 70 N.J. 100 (1976) and State v. Jefferson, 101 N.J. Super. 519 (App. Div. 1968). It is also improper to question a witness as to a prior conviction if the Prosecutor has no actual knowledge that one does exist. State v. Cooper, 10 N.J. 532 (1953).

I. SUMMATION

No area of a trial is as fraught with danger as the summation. While Courts have long held that the Prosecutor is entitled to strenuously argue his case and comment freely on the evidence and its reasonable implications, care is essential to be sure that excessive zeal does not lead to a mistrial, reversal or worse. State v. Johnson, 31 N.J. 49 (1960); State v. Dent, 51 N.J. 428 (1968); State v. Hippleworth, 33 N.J. 300 (1960). The Courts have expressed growing concern and outrage at improper comments by Prosecutors and have not hesitated to reverse where necessary. State v. Spano, 64 N.J. 566 (1974); State v. Johnson, 65 N.J. 388 (1974); State v. Farrell, 61 N.J. 99 (1973).

A Prosecutor may argue all reasonable inferences from evidence in the record but may not intentionally misstate the evidence or mislead the jury as to inferences it may draw. He should not express his personal belief or opinion as to the truth

of any testimony or the guilt of the defendant. He should not use arguments calculated to inflame the passions or prejudices of the jurors and should refrain from argument which diverts the jury from its duty to decide the case on the evidence.

A Prosecutor should not refer to or argue on the basis of facts outside the record unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the Court took judicial notice.

The article entitled "Limits on the Scope of Prosecutorial Comments and Tactics, " 1 Crim. Justice Quarterly 18 (1973), catalogues decisions and refers to specific objectionable comments. References to items not in evidence, name calling (brutes, butchers, bums, punks, animals), references to specific jurors by name, implications of knowledge of the guilt of the defendant from evidence other than that adduced at trial, appeals to prejudice and comments on the failure of the defendant to testify are generally improper and should be avoided.

J. DISCOVERY

A Prosecutor shall disclose to the defense at the earliest feasible opportunity any evidence which would tend to negate guilt or mitigate punishment. He should also comply in good faith with discovery procedures under applicable law and should not intentionally avoid pursuing evidence he believes will damage the prosecution or aid the accused. See DR 7-103(B); Brady v. Maryland, 373 U.S. 83 (1963); and R. 3:13-3. Failure to abide by these obligations will lead to a reversal of an otherwise valid

conviction, State v. Carter, 71 N.J. 348 (1978), and subject the errant Prosecutor to disciplinary proceedings.

K. CRIMINAL JUSTICE REFORM

It is an affirmative duty of a Prosecutor to improve the quality and efficiency of the criminal justice system. His daily contact with the administration of criminal justice places him in a unique position to influence the development and improvement of the law within the law enforcement community and in cooperation with the defense bar. Reforms will more readily occur through a joint effort of legislative bodies, the public, the defense bar and the law enforcement community. Prosecutors should assume a leadership role.

L. CAPITAL CASES

All prosecutor's should review the Supreme Court's admonition to Prosecutor's trying capital cases contained in State v. Ramseur, 106 N.J. 123, 323, 324 (1987).

PROSECUTORS' HANDLING OF CITIZEN COMPLAINTS, AND THE RIGHTS AND ENTITLEMENTS OF VICTIMS AND WITNESSES

Pamela J. Fisher
Division of Criminal Justice

I. CITIZENS' COMPLAINTS

Each county prosecutor should designate an assistant prosecutor to evaluate all citizen complaints that are forwarded directly to the office.

II. ATTORNEY GENERAL STANDARDS TO ENSURE THE RIGHTS OF CRIME VICTIMS, APRIL 21, 1988.

Prosecutors should establish and maintain direct contact with their county office of victim-witness advocacy and should incorporate victim-witness rights and services into the ongoing operations of the office. Victim rights and services during prosecution generally cover the following areas:

A. INFORMATION ABOUT THE CRIMINAL JUSTICE SYSTEM AND REDUCING INCONVENIENCES

B. NOTIFICATION OF CASE STATUS

C. INFORMATION ABOUT COMPENSATION

D. VICTIM CONSULTATION

E. SPEEDY TRIAL

F. VICTIM-WITNESS INTIMIDATION/HARASSMENT

G. RESTITUTION

H. PROPERTY RETURN

I. SAFE/SEPARATE VICTIM-WITNESS WAITING FACILITIES

J. OFFICE OF VICTIM-WITNESS ADVOCACY

COMMENTARY

I. PROSECUTORS' HANDLING OF CITIZEN COMPLAINTS

It cannot be gainsaid that many significant prosecutions are initiated based upon complaints or information received from private citizens. Although of times inarticulately presented, such complaints are worthy of careful scrutiny. Therefore, it is recommended that each Prosecutor's Office designate an assistant prosecutor to evaluate citizen complaints. The initial function of the assistant prosecutor assigned will be to determine whether there has been a violation of the criminal law upon the facts presented. If inadequate facts are presented, independent investigation may be necessary to make this determination. If the facts are elicited which are sufficient to warrant a criminal complaint, then it must be determined whether the complaint ought to be referred to the local police department, the Division of Criminal Justice, or retained by the Prosecutor's Office for handling. As a general rule, complaints that do not deal with public corruption or other matters more suited to investigation by the Prosecutor's Office or the Division of Criminal Justice should be referred to the appropriate local police department.

The assistant prosecutor handling citizen complaints should compile a list of local, State and federal agencies to which a citizen may be referred in appropriate situations. Clearly,

referral should be in the form of a suggestion rather than a directive. As a general rule, no legal advice regarding civil matters should be rendered by the Assistant Prosecutor.

Victims and witnesses play a major role in the criminal justice process. The success of a criminal investigation and prosecution is frequently the direct result of victim and witness cooperation with involved criminal justice agencies. While successful prosecution may rely on witnesses to cooperate, full cooperation cannot be achieved if victims' interests are not taken into account, or if victims are denied a meaningful role in the criminal justice system.

The physical, emotional and financial injuries that victims suffer because of crime have been extensively documented. Less well known, but equally painful for the victims, is the so-called "secondary injury" inflicted on victims by a criminal justice system that has historically considered victims as little more than useful evidence in the pursuit of a successful prosecution.

On a national level, the last ten years have witnessed a dramatic transformation in the treatment of crime victims by the criminal justice system. The system's traditional emphasis on the apprehension, prosecution, and conviction of criminal offenders has been broadened in the last decade by the recognition that more had to be done to protect the rights, and to provide for the needs of innocent victims of crime.

In New Jersey, the "Crime Victims' Bill of Rights" (N.J.S.A. 52:4B-34 to 38) was signed into law in July, 1985 and the "Drunk Driving Victims' Bill of Rights (N.J.S.A. 39:4-50.9 to 13) was

signed into law in January, 1986. Among some of the rights provided to victims by these laws are: the right to be notified of the status of their case; the right to be informed about the availability of compensation and social services; the right to be free from intimidation; the right to the prompt return of property; the right to secure waiting areas in courthouses; the right to have inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible; and the right to be treated with dignity and compassion by the criminal justice system.

To fulfill the obligations made to victims and witnesses in these laws and in the furtherance of victim rights, additional legislation was signed into law in January, 1986 (N.J.S.A. 52:4B-43) which created the Office of Victim-Witness Advocacy within the Division of Criminal Justice and the twenty-one County Prosecutors Offices. Under the provisions of this legislation, the Chief of the Office of Victim-Witness Advocacy appoints a County Victim-Witness Coordinator in each of the twenty-one counties who are responsible for ensuring the implementation of victim-witness rights within their county.

Prior to the enactment of N.J.S.A. 52:4B-43, many county prosecutors' offices provided victim-witness assistance but these programs operated without service mandates, without state monitoring, and with limited authority.

On April 21, 1988, Attorney General Cary Edwards issued the Attorney General Standards to Ensure the Rights of Crime Victims, pursuant to N.J.S.A. 52:4B-44a and b, which mandates that basic

rights and services be provided to victims and witnesses by the law enforcement community when investigating and prosecuting criminal cases.

As defined in the Standards, "victim" means a person who suffers personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a first, second, third or fourth degree offense committed against that person; or as a result of a motor vehicle accident, involving another person's driving while under the influence of drugs or alcohol; or as a result of a bias accident, domestic violence, or a motor vehicle violation involving a fatality.

Witnesses to the above aforementioned crimes and homicide and sudden death survivors are also entitled to the rights and services contained within the Standards as applicable.

Under the Standards, crime victims and witnesses are guaranteed a number of important services that prosecutors are principally responsible for providing. The following section highlights the services mandated by the Standards.

A. INFORMATION ABOUT THE CRIMINAL JUSTICE SYSTEM AND REDUCING INCONVENIENCES.

Victims and witnesses who are left with the responsibility of securing their own transportation; locating the courthouse and the specific courtroom; incurring parking and child care expenses and taking time away from their jobs are being inconvenienced. Victims who are offered little or no information about their case and are placed on the witness stand with scant preparation are

being asked to perform a function which has not been made clear to them.

Victim-witness cooperation can be strengthened by providing advance explanation to victims and witnesses of what may be expected of them throughout the process, and why the system requires this. The provision of minor benefits such as brochures containing directions and courthouse/courtroom locations, parking privileges, child care and transportation services gives the victim and witness the feeling that the system is responsive to their needs and does not take their participation for granted.

Victims and witnesses should be provided with information about the criminal justice system and their role in the process as soon as the case is reported to the Prosecutor's Office. This should continue throughout the entire process by way of interlocutory letters, pamphlets, verbal communications, re-enactments and courtroom walk-throughs.

B. NOTIFICATION OF CASE STATUS

The Prosecutor's Office is required to notify victims and witnesses of any change in the status of their case. The Attorney General Standards to Ensure the Rights of Crime Victims have outlined an extensive notification system consisting of a series of form letters which correspond to each significant phase of criminal prosecution. The events listed below represent the minimum notifications that must be provided to all victims and witnesses and a designated survivor of a homicide victim regarding case status. Law enforcement officers who are case witnesses should be provided with notification as to disposition as

applicable. Notifications on juvenile cases shall be made as applicable and pursuant to the provisions of N.J.S.A. 2A:4A-60 et. seq.

1. Initial contact or introductory letter that informs the victim or witness that the case has been referred to the Prosecutor's Office, and explains and offers the services available from the County Office of Victim-Witness Advocacy.
2. Pre-grand jury remand
3. Administrative dismissal
4. Grand jury remand
5. Grand jury dismissal (no bill)
6. Indictment returned (true bill)
7. Acceptance into Pre-Trial Intervention Program
8. Termination or completion of Pre-Trial Intervention Program
9. Negotiated plea on all charges
10. Release on bail/conditions of bail
11. Fugitive status
12. Court dismissal
13. Sentencing date
14. Sentence imposed on the defendant by the court
15. Defendant's filing of an appeal and subsequent status changes

16. Disposition on all charges

17. Mistrial/retrial

18. Mistrial/dismissal

19. Other unique or special occurrences

When the victim is a child, notification of case status should be made to an appropriate, designated parent, guardian or caretaker and, if applicable, to the Division of Youth and Family Services.

The victim, or next of kin if the victim is deceased, must be notified of any determination to seek or decline prosecution in motor vehicle crashes/accidents involving another person's driving while under the influence of drugs or alcohol.

The Standards also require five (5) business days advance notice to victims regarding trial dates and sentencing hearings, and that victims be told of their ability to attend the sentencing hearing.

Victims of acts committed by defendants convicted of first and second degree offenses must be routinely informed in writing of their right to provide a victim impact statement to a Senior Hearing Officer of the Parole Board pursuant to N.J.S.A. 30:123.54.

Victims, including homicide survivors, should be notified as soon as possible of a defendant's release from custody and of any associated conditions of that release. At this time, it may be proper to request a restraining order against the defendant as a condition of bail so that if bail is granted the victim can still feel shielded from prospective harassment.

C. INFORMATION ABOUT COMPENSATION

Prosecutors are responsible for providing victims and witnesses with information that will help them secure compensation where there has been physical injuries, dismemberment, death, or psychological counseling resulting in financial loss.

D. VICTIM CONSULTATION

It is recommended that prosecutors consult with every victim of violent crime, explaining how the plea negotiation process operates, what negotiating posture the prosecution has adopted, and why that posture was chosen. Prosecutors should always attempt to take into account the victim's views before reaching a final decision. Victims legitimately view the resolution of an sentencing in a case as an evaluation of the harm done to them.

Whenever the prosecutor considers the dismissal of a case involving violent crime, the victim should be consulted in advance and told the reasons for the prosecutor's decision.

Victims should be allowed to convey the information that they possess to the judge that will determine case outcomes. Prosecutors should bring the views of victims of violent crime to the attention of the court on bail decisions, continuances, plea agreements, dismissals, sentencing and restitution. Practices should be established that promote opportunities for victims to make their views on these matters readily known. The prosecutor is in the best position to ensure that the victim is accorded a proper role in the criminal justice process.

E. SPEEDY TRIAL

When victims are subjected to long delays and postponements in court proceedings, it can result in the ultimate unavailability of some witnesses and the fading memory of others.

Prosecutors and the court should take any appropriate action necessary to provide a speedy trial in a matter in which a child thirteen years of age or younger is a victim pursuant to P.L. 1987, c. 148 and should always attempt to provide a speedy trial in all cases involving victims of violent crime.

Prosecutors should oppose case continuances. When such delays are necessary, practices should be established which promote continuance dates that are convenient to victims and witnesses; that those dates are secured in advance; and that the reasons for the continuances are adequately explained to the victim.

F. VICTIM-WITNESS INTIMIDATION/HARASSMENT

Victims have legitimate fears for their own safety and/or the safety of others. It is a function of the prosecutor to discern the facts that justify such fears and to take the appropriate actions.

When victims and witnesses first come into contact with the prosecutor's office they should be informed of the possibility of retaliation, when applicable, and of the potential responses to include bail revocation, restraining orders, additional charges, and the availability of transportation and escort to court.

G. RESTITUTION

Restitution requests should be made routinely by the prosecutor based on interviews with the victim. Restitution to the victim should be sought wherever appropriate as part of the plea agreement and/or at the sentencing proceeding. In addition, restitution should be sought in connection with applications for pre-trial intervention.

Restitution should be ordered in every case in which the victim has suffered monetary loss. Prosecutors should inform victims of the prospects of restitution, and ensure that the court is made aware of the victim's losses so that a restitution order is accurate and inclusive. Prosecutors should consider the issue of restitution for the victim in charging and plea negotiation decisions, which may affect the amount of restitution the court can order.

H. PROPERTY RETURN

Victims should not have to battle the justice system to get their property back or wait for months or years for its return. There are, of course, some items that will have particular evidentiary significance because of their character or condition and these must be retained. Other items, however, can be presented to the jury just as effectively by photograph. Prosecutors should recognize their responsibility to release property as expeditiously as possible, to take the initiative in doing so, and to establish the procedures necessary to being this about.

Property retained for prosecution should be returned as soon as possible but not later than forty-five (45) days of the judgment of conviction unless evidentiary requirements pertaining to an appeal prohibit it. (not applicable to firearms and contraband).

I. SAFE/SEPARATE VICTIM-WITNESS WAITING FACILITIES

Prosecutors are required to provide safe waiting areas for victims and witnesses separated from defendants and defense counsel for a trial or hearing.

J. OFFICE OF VICTIM ADVOCACY

Prosecutors should establish and maintain direct contact with the County Office of Victim-Witness Advocacy and refer victims to the Office who are in need of further assistance. For further information, see section four of the Standards which sets forth the services that the Office of Victim-Witness Advocacy is mandated to provide.

RELATIONS WITH THE MEDIA

Robert P. O'Leary
Assistant Prosecutor of Union County
and
Kevin R. Brotz
Assistant Prosecutor of Hunterdon County

INTRODUCTION[1]

As if often the case, one constitutional right will be in tension with the obligation of another. This is surely true with respect to the need of the public to obtain information and the media's right to publish it and the obligation of government to afford the accused a fair trial.[2] In short, 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 liberty to report on public events, properly conceived, is deeply rooted in our constitutional system. So too, safeguards for the fair administration of criminal justice are enshrined in our Bill of Rights and form the very reason for government, as the preamble of the federal Constitution plainly says. Respect for both of these indispensable elements of our organic law "presents some of the most difficult and delicate problems" confronting our criminal justice system.[3]

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[1]Introduction adapted from the original 1979 Prosecutors Manual.

[2]State v. Allen, 73 N.J. 132 (1977).

[3]Maryland v. Baltimore Radio Show, Inc., 338 U.S. 912, 914-20 (1950); State v. Williams, 93 N.J. 39 (1983).

A free press "lies at the very heart of our democracy and its preservation is essential to the survival of liberty."[4] Deeply ingrained in American jurisprudence is the concept that freedom of expression "is essential to the preservation of the rights of every individual, his life, property and character...." Open access to information is the lifeblood of democracy, for it insures informed citizenry able to reach intelligent decisions regarding vital public issues. As aptly observed by Mr. Justice Holmes, "the best test of truth is the power of the thought to get itself accepted in the competition of the market.[5] Free speech and free press assure public dialogue through which political and social changes may be used in a peaceful manner.[6] As recent events have demonstrated, the constitutional guarantee of freedom

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[4]Craig v. Harney, 331 U.S. 367, 383 (1947) (Separate opinion of Mr. Justice Murphy).

[5]E.g., Emerson, "Toward a General Theory of the First Amendment," 72 Yale L. J. 877, 879 et seq. (1963); Meiklejohn, Free Speech and Its Relation to Self-Government (1948) at pp. 1-10; Meiklejohn, "The First Amendment is an Absolute," 1961 Sup. Ct. Review 245, 246-56.

[6]Therefore, the traditional role of the press in preserving individual rights is to educate the people to abuses of power. The people can rectify the abuses by altering the composition of government, and, infrequently, by altering fundamental organic laws. Likewise, the free press reports and evaluates confrontations between individuals and governments. See, e.g., Time Inc. v. Firestone, ___ U.S. ___, 96 S.Ct. 958, 965-66 (1976); Gerty v. Robert Welch, Inc., 418 U.S. 323, 339-41 (1974); Rosenbloom v. Metromedia Inc., 403 U.S. 29 (1971) (no majority opinion); Monitor Patriot Co. v. Ray, 401 U.S. 265, 266-67 (1971) Time Inc. v. Pape, 401 U.S. 279, 283-285 (1971); Greenbelt Cooperative Publ. Co. v. Brewster, 398 U.S. 6, 9 (1969); St. Armant v. Thompson, 390 U.S. 81 (1967); Curtis Publ. Co. v. Batts, 388 U.S. 130, 134 (1967); New York Times v. Sullivan, 376 U.S. 254, 269-78 (1964). See also, e.g., Emerson, "Toward a General Theory," supra, 72 Yale L. J. at 907 et seq.; Frantz, "The First Amendment in the Balance," 71 Yale L. J. 1424 (1962); Meiklejohn, Free Speech, supra, at 21-26; 1961 Sup.Ct.Rev. at 247-48. See e.g., Chaplinsky v. New Hampshire, 315 U.S. 568 (194).

of the press is an important bulwark against governmental abuses. Perhaps it bears repeating that our Constitution guarantees government by the people. It does not, however, necessarily insure good government. Built into our system is the capacity to commit error and the ability to correct it. Freedom of the press which encourages the free interplay of ideas is thus essential to our democratic government.

The First Amendment interest must be balanced against the State's Constitutional obligation to afford a fair trial to an individual accused of criminal conduct.[7] No doubt, a free press is indispensable to a free society. Further, it has been said that "[w]hat transpires in the court room is public property."[8] Surely, there is no "special prerequisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit or censor events which transpire in proceedings before it."[9] Freedom of the press, however, is not an end in itself. "The scope and nature of the constitutional protection of freedom of speech must be viewed in that light and in that light applied."[10] 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

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[7]See, e.g., Bridges v. California, 314 U.S. 52 (1941). On the public interest in trial publicity, see, e.g., The Special Committee on Radio, Television and the Administration of Justice of Association of the Borough of the City of New York: Freedom of the Press and Fair Trial: Final Report with Recommendation (1967), at p. 11 (generally against direct limitation on the press); Warren and Abell, "Free Press and Fair Trial: The 'Gag Order', A California Aberration," 45 S.Cal.L.Rev. 51, 74-85 (1972).

[8]Craig v. Harney, supra, 331 U.S. at 374.

[9]Id.

[10]Pennekamp v. Florida, supra, 328 U.S. at 354 (concurring opinion of Mr. Justice Frankfurter).

trial free from outside pressures and influences."[11] Every other right including the right to a free press itself, may depend on the ability to obtain a judicial hearing as dispassionate and impartial as the weakness in man will permit.[12] Plainly, the independence of judicial proceedings is no less of a means of a free society. Especially in the administration of the criminal law, that most awesome aspect of government, "society needs independent courts of justice."[13] Public safety and the security of the innocent alike "depend upon wise and impartial criminal justice."[14] "Misuse of its machinery may undermine the safety of the State and deprive the individual of all that makes a free man's life dear."[15]

The resolution of this conflict by the legislature and judiciary is reflected in the five areas discussed below: (1) Disclosure of Information to the Media; (2) Media Access to a Crime Scene; (3) Media Access to the Courtroom; (4) Video and Audio Coverage of Proceedings in the Courts; (5) Access to Media Information.

DISCLOSURE OF INFORMATION TO THE MEDIA

While the media has a right of access to the courtroom, as will be discussed hereafter, certain limitations are placed upon extra-judicial statements by those who are engaged in the prosecution and defense of criminal matters. Rule 1:14

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[11] Craig v. Harney, supra, 331 U.S. at 394-395 (dissenting opinion of Mr. Justice Jackson).
[12] Id.
[13] Pennekamp v. Florida, supra, 328 U.S. at 356 (concurring opinion of Mr. Justice Frankfurter).
[14] Id. at 357.
[15] Id.

incorporates and makes binding upon lawyers in New Jersey the Disciplinary Rules of the Code of Professional Responsibility of the American Bar Association. Disciplinary Rule 7-107 deals specifically with the public dissemination of information by lawyers involved in the prosecution as well as the defense of criminal matters.

In addition, all attorneys representing the State should be aware of Rule 3.6 of the Rules of Professional Conduct. This rule requires that attorneys announcing an arrest include a statement indicating that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty. See RPC 3.6(b)(6).

The need to develop a sound policy for providing information to members of the media, balancing the right of the press to gather and publish information with the right of an accused to a fair and impartial trial, has been further heightened by the issuance of Governor's Executive Order No. 123 concerning public records.

Prior criminal histories and photographs are NOT deemed to be public records for release. The items considered suitable for release have not changed from the prior Supreme Court "Fair Trial Free Press" guidelines with the exception of release of the crime victim's identity.

Take careful note of Section (ii) indicating that police and prosecutors should consider "the safety of the victim and the victim's family and the integrity of any ongoing investigation" in deciding this issue. It is a good policy to review and find support for a police department's decision along these lines and

that it is unwise (prior to trial or plea and sometimes not even then) to release the name of a crime victim unless circumstances allow it. All too often a person victimized sees his or her name in print and decides to withdraw a criminal complaint or refuses to come to court to testify. The Order and the guidelines, which are ethically and legally binding on all Prosecutors, permit a wide range of information to be given out by the law enforcement community. Familiarity with them can result in positive press for your department, particularly when a good job comes down.

GENERAL STANDARD

Each prosecutor's office should establish a procedure for the release of information that is expected to be disseminated to the news media, and that procedure should comply with the statement of principles and guidelines for reporting of criminal procedures in Executive Order No. 123 and the past guidelines promulgated by the New Jersey Supreme Court.

The Supreme Court has adopted the following disciplinary rules governing the prosecutor's responsibilities pertaining to the media:

a. Prior to the filing of a complaint, accusation or indictment, a prosecutor shall not make or participate in making an extra-judicial statement that he expects to be disseminated by means of public communication and that does more than state without elaboration:

   (1) Information contained in a public record relating to the matter.

   (2) That the investigation is in progress.

   (3) The general scope of the investigation including a description of the offense and, if permitted by the law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

b. A prosecutor shall not make or participate in making an extra-judicial statement that he expects to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

c. These rules do not preclude a prosecutor from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime when not proscribed by law.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission or statement.

(8) The nature, substance, or test of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

d. During the selection of a jury or the trial of a criminal matter, a prosecutor shall not make or participate in making an extra-judicial statement that he expects to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

e. After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a prosecutor shall not make or participate in making an extra-judicial statement that he expects to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

The county prosecutor's office may act as a clearinghouse for all information concerning existing or potential investigations and prosecutions disseminated to the media by law enforcement agencies within its jurisdiction, and the county prosecutor or a designated senior assistant prosecutor should review all material before it is disseminated.

The relationship between the prosecutor's office and the media should be open and cordial, but the reality or appearance of collaboration between them is to be avoided.

The executive order requires that criminal records required to be maintained or kept be released "as soon as practical" unless it shall appear that the release of such information will

jeopardize the safety of any person or any investigation in progress or be otherwise inappropriate. For the purposes of this order, the term "as soon as practicable" shall generally be understood to mean within fourteen hours;

The Attorney General, as Chief Law Enforcement Officer of the State, or his designee, or where appropriate, the County Prosecutor, as Chief Law Enforcement Officer of the county, shall promptly resolve all disputes as to whether or not the release of records would be "otherwise inappropriate," between the custodian of any records referred to herein and any person seeking access thereto. Where the Attorney General or the County Prosecutor determines that the release of records would be "otherwise inappropriate," he shall issue a brief statement explaining his decision.

Prosecutors reviewing the terms of the executive order should know its terms should be carried out in the spirit of Chapter 73, P.L. 1963, and keeping in mind the right of citizens to be aware of events occurring in their community.

Prior to the filing of a formal charge, a prosecutor investigating a criminal matter may not make any extra-judicial statement that one expects to be disseminated by means of public communication. The only exception to this is to state, without elaboration, information contained in a public record, statements as to the general scope of an investigation and that an investigation is in progress, a request for assistance in apprehending a suspect or in a related matter, and a warning to the public of any dangers.

The Disciplinary Rule also prohibits a prosecutor or defense attorney from making extra-judicial statements relating to the character, reputation, or prior criminal record of an accused, the possibility of a plea of guilty, or an opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case, the existence or contents of a confession or statement by the accused or the performance or results of examinations of the accused (or his refusal to make a statement or submit to an examination), and information as to a perspective witness. However, a lawyer is not precluded from making statements with regard to basic information, such as the identity of the victim and the accused, and certain facts with regard to the arrest of the defendant and a description of the evidence seized (other than a confession).

A prosecutor or defense attorney is also precluded from making extra-judicial statements during the selection of a jury or during the trial of a criminal matter relating to the trial or other matters that are reasonably likely to interfere with fair trial, except that statements may be made without comment with regard to matters of public record in a case. Finally, the Rule precludes the making of an extra-judicial statement after the completion of a trial or disposition without sentence, with regard to any matter that is reasonably likely to affect the imposition of sentence.

Our Supreme Court, in adopting the above guidelines and disciplinary rules, has attempted to alleviate the tension between the public's right to know and the government's obligation to

afford a fair trial to the accused. Although the guidelines are not legally binding with respect to the media, prosecutors are ethically obliged to comply. The guidelines have been embodied in the Disciplinary Rules, DR 7-107, and failure to comply with them may lead to ethics proceedings by our Supreme Court, or alternatively, may delay a trial or jeopardize a successful prosecution.

Therefore, it is essential that the prosecutor and his staff be familiar with the guidelines and exercise control over the dissemination of information relating to a criminal case. This includes control over dissemination of information to the media by law enforcement agencies within the county prosecutor's jurisdiction. This principle requires that the county prosecutor familiarize local police agencies with guidelines and direct them to adopt policies to ensure compliance.

On a related issue, 1963 marked the enactment of what has come to be known as the "Rights to Know Law," N.J.S.A. 47:1A-1 et seq. As noted in the celebrated case of Nero v. Hyland, 136 N.J. Super. 537 (L. Div. 1975) reversed on other grounds 146 N.J. Super. 46 (App. Div. 1977) reversed on other grounds 76 N.J. 213 (1978), "Section 47:1A-1 et seq, relating to the accessibility of public records for examination by Citizens of the State, makes available to the general public official records of government with a right to inspect and obtain copies of those records subject to certain exceptions for the protection of public interest." (emphasis supplied). Our courts have made it clear that the right to know law pertains to what are generally considered public

records which are required to be made or maintained.[16] However, Section Two of the "Right to Know" Law (N.J.S.A. 47:1A-2) pertaining to records which are required by law to be made, maintained or kept on file does not require the making, maintaining or keeping on file the results of an investigation by law enforcement officials or agencies into the alleged commission of a criminal offense. River Edge Savings and Loan Association v. Hyland, 165 N.J. Super. (App. Div. 1979).

Most importantly the "Right to Know" Law excepts from its provisions records of ongoing investigations where the release of such records would be "inimical to the public interest," N.J.S.A. 47:1A-3. Although members of the public need not demonstrate any particular need in order to obtain public documents,[17] the burden is quite different where the applicant is seeking records or documents like Grand Jury testimony which are secret or for some reason non-public. Application of Jaslalevich, 169 N.J. Super. 392 (App. Div. 1979). In such cases compelling circumstances or need must be demonstrated before disclosure may be permitted. Id.

It is apparent, therefore, that Prosecutors, their assistants and the law enforcement community be completely informed concerning the applicability of the Rights to Know Law on their work product. Police and employees should be cautioned in particular to clear the release of any law enforcement information

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[16] De Lia v. Kiernan, 119 N.J. Super. 581 (App. Div. 1972). See also, Matter of Toth, 175 N.J. Super. 254 (App. Div. 1980).

[17] See Atty. Gen. F.O. 1974 No. 5 and Ramer v. Byrne, 154 N.J. Super. 381 (Law Div. 1977) aff'd., 162 N.J. Super. 455, (App. Div. 1978).

before dissemination and precise directives should be formulated to prevent the inappropriate disclosure of confidential material.

The following records shall not be deemed to be public records subject to inspection and examination and available for copying pursuant to the provisions of Chapter 73, P.L. 1963;

(a) Fingerprints, cards, plates and photographs and similar criminal investigation records which are required to be made, maintained or kept by any State or legal government agency except that the following information shall be made available to the public as soon as practicable unless it shall appear that the release of such information will jeopardize the safety of any person or any investigation in progress or be otherwise inappropriate. For the purposes of this order, the term "as soon as practicable" shall generally be understood to mean within twenty-four hours;

(i) Where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any.

(ii) If an arrest has been made, information as to the name, address and age of any victims unless there has not been sufficient opportunity for notification of next of kin of any victim of injury and/or death to any such victim or where the release of the names of any victim would be contrary to existing law or Court rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation,

shall be considered. These concerns are heightened when a crime has been reported but no arrest yet made.

(iii) If an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or Court rule.

MEDIA ACCESS TO A CRIME SCENE

An often perplexing area facing law enforcement is admission of news media personnel at the scene of an accident, disaster or crime.

The news media has a right to perform their news gathering functions at all newsworthy events and to report or photograph anything they observe when legally present at an emergency scene. However, media representatives have no legal authority to be within a crime scene, an area which has been secured to preserve evidence or at a location where their presence jeopardizes police operations.

The New Jersey Supreme Court has recognized this special constitutional protection afforded the press, as well as the special circumstances under which it must yield to important and legitimate government interests.

The leading case in this area is State v. Lashinsky, 81 N.J. 1 (1979), a 1979 decision arising over a press photographer's failure to move away from the immediate vicinity of a serious car accident. The court found that a police officer, made aware of

the identity of a media representative, should accommodate the protected interest to record a news event.

But the court upheld a disorderly persons violation by the photographer, who refused to heed the policeman's order to move back from the scene where a young girl was injured, fluids leaked from the car, personal property was strewn about and a crowd was gathering.

Each Prosecutor, as chief law enforcement officer, should attempt to make police departments within the county mindful of the competing values which can clash in the daily routine on the street.

The press card is not a guarantee of access and direct hazards to the public and invasions of personal privacy require discretion and swift, reasonable action.

On the other hand, it must be remembered that journalists are doing a job and do not visit crime or accident scenes for their own edification. They are in attendance to gather information and pass it along to the public. Opportunities to perform this function are frequently momentary at an emergency scene.

There is no guide or list which will cover every situation concerning media access to a crime scene. Rather, recognizing the issues and effecting reasonable action is the proper course for law enforcement representatives.

MEDIA ACCESS TO THE COURTROOM

Media access to the courtroom has been the subject of recent decisions by the United States and New Jersey Supreme Courts. In Richmond Newspapers Inc. v. Virginia, 448 U.S. 55, 65 L.Ed.2d 973,

100 S.Ct. 2814 (1980), the Supreme Court acknowledged the right of the public to attend a criminal trial under the First and Fourteenth Amendments of the U.S. Constitution. The Court noted that, although the Sixth Amendment guarantees the accused a right to a public trial, it does not give him a right to a private trial, and noted that, absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public. This interpretation was elaborated upon in Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 73 L.Ed.2d 248, 102 S.Ct. 2613 (1982). The Court therein reaffirmed that the right of access to criminal trials is of constitutional dimension, but also noted that right of access is not absolute. However, the circumstances under which the press and public can be barred from a criminal trial are limited. Denial of access to the courtroom requires a showing of compelling governmental interests. In its most recent pronouncement, the Court extended the right of access to the pretrial proceeding of jury selection. Press Enterprise Company v. Superior Court, 52 U.S. Law Week, 4113 (1984).

While the Press-Enterprise case was pending before the United States Supreme Court, the New Jersey Supreme Court relied upon the new Jersey Constitution to find a public and media right of access to pretrial proceedings in criminal cases. State v. Williams, 93 N.J. 39 (1983). As in Glove Newspaper Co., however, the Court noted that this right to access conflicted with the defendant's Sixth Amendment right to a fair trial, and adopted a balancing test as to the closure of pretrial proceedings in criminal prosecutions. The Court held that all pretrial proceedings in

criminal prosecution should be open to the public and the press, except in those instances where the trial court is clearly satisfied that conducting the pretrial proceeding in open court would result in a realistic likelihood of prejudice to a fair trial by an impartial jury as a result of adverse publicity, and further, that such prejudice could not be overcome by resort to various methods relating to the selection of jurors that will be available to the court at the time of trial. The Court noted possible alternatives to closure, such as using a larger jury pool, permitting a change of venue, the impaneling of a foreign jury, extensive and searching voir dire of potential jurors, liberal excuse of potential jurors for cause at the defendant's request, and repeated and effective cautionary jury instructions.

VIDEO AND AUDIO COVERAGE OF PROCEEDINGS IN THE COURTS

The more specific problem of media access to the courtroom by the electronic and photographic media has also been addressed by the Courts.

Canon 3 of the Code of Judicial Conduct (incorporated into the New Jersey Court Rules by R.:1-14) initially required a Judge to prohibit broadcasting, televising, recording, and the taking of photographs in a courtroom. On June 9, 1981, after conducting a two year experimental program, the New Jersey Supreme Court ordered that Canon 3a(7) be amended to permanently authorize still and television camera and audio coverage of proceedings in court pursuant to detailed guidelines. 107 N.J.L.J. 558 (1981). These guidelines were further amended as the Court continued to gain practical experience with its program. 110 N.J.L.J. 664; 113

N.J.L.J. 254. On November 10, 1982, the Court authorized an experimental program permitting still and television camera and audio coverage of proceedings in certain specified municipal courts for the first time.

The above cited guidelines provide detailed limitations upon the type and location of equipment and personnel which can be used by the media. The location of the equipment and personnel is left to the discretion of the Court. The guidelines specifically prohibit television, radio, or still photograph coverage of proceedings in juvenile court, or in cases involving, inter alia, rape or where such coverage would cause a substantial increase in threat or harm to any participant in the case, or would otherwise interfere with the fair administration of justice, or materially interfere with the achievement of a fair trial. Permission for coverage is not conditioned upon obtaining the consent of any party, attorney, witness, or participant in a proceeding.

Media coverage of proceedings in Court has been the subject of challenge by convicted defendants. However, in State v. Newsome, 177 N.J. Super. 221 (App. Div. 1980), the Court rejected a challenge that the defendant's partially-televised trial denied him his right of due process under the Fifth and Fourteenth Amendment, and denied him his right to a fair trial under the Sixth Amendment. The court found no per se prohibition against well-regulated, moderate electronic media coverage of judicial proceedings. This interpretation of prior Supreme Court decisions was ratified when the United States Supreme Court itself reached

the same conclusion in Chandler v. Florida, 449 U.S. 560, 66 L.Ed.2d 740, 101 S.Ct. 802 (1981).

ACCESS TO MEDIA INFORMATION

Corresponding to the media's right of access to the courtroom in order to inform the public is their right to protect information which it gathers outside the courtroom. By Rules of Evidence (Rule 27) and by statute (N.J.S.A. 2A:84A-21), persons engaged in the news media have a privilege to refuse to disclose the source of information and the information itself in any legal or quasi-legal proceeding or before any investigative body. This privilege applies to information obtained in the course of pursuing professional media activities, but does not include situations in which a reporter intentionally conceals from the source the fact that he is a reporter, and does not include any situation in which a reporter is an eyewitness to, or a participant in, any act involving physical violence or property damage.

While this "Shield Law" privilege is broad and exclusive on its face, the New Jersey Supreme Court in In re Myron Farber, 78 N.J. 259 (1979), held that the Sixth Amendment counterpart in the New Jersey Constitution prevailed over the Shield Law. Nevertheless, the Court also held that, in light of legislative statement in the Shield Law, there were limitations upon the constitutional right of a defendant to secure information from the news media. These limitations, as announced in Farber, were subsequently embodied in and elaborated upon in legislative amendments to the Shield Law, reflected in N.J.S.A. 2A:84A-21.1

through N.J.S.A. 2A:84A-21.8. These amendments provide for the resolution of a claim by a defendant that certain materials possessed by the media are required for his defense, which conflicts with the claim by the media that the materials sought are privileged. In the absence of a clear and convincing showing that the newspaperman's privilege has been waived, under Rule 37 (N.J.S.A. 2A:84A-29) a defendant must show by a preponderance of the evidence that there is a reasonable probability that the subpoenaed materials are relevant, material, and necessary to his defense, that they could not be secured from any less intrusive source, and that the request is not overbroad, oppressive, or unreasonably burdensome. In addition, the statute adds the requirement (not present in the Farber case) that the defendant must show by a preponderance of the evidence that the value of the materials sought, as it bears upon the issue of guilt or innocence, outweighs the privilege against disclosure. These showings are to be made even prior to an in camera inspection of the materials by the court.[18] Finally, before disclosure is made, a court must also be satisfied as to the probable admissibility of the materials at the trial.

The other side of the coin, access to media information by the Prosecutor, is also the subject of the Shield Law. N.J.S.A. 2A:84A-21.9 through N.J.S.A. 2A:84A-21.13 establishes a general rule prohibiting searches and seizures for materials held by the news media which have been obtained in a course of pursuing their news media activities. There are only four specified exceptions

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[18]State v. Boiardo, 82 N.J. 446 (1980); 83 N.J. 350 (1980).

to this prohibition, namely, where there is probable cause to believe that first, the persons or the business possessing the materials has committed or is committing the criminal offense for which the materials are sought, or second, the immediate seizure of the materials is necessary to prevent the death of or serious bodily injury to a human being, or third, the giving of notice pursuant to a subpoena duces tecum would result in the destruction, alteration or deliberate concealment of the documentary materials (other than "work product"), or fourth, the documentary materials (other than "work product"), have not been produced in response to a court order directing compliance with the subpoena duces tecum and all appellate remedies have been exhausted by the parties seeking to quash the subpoena duces tecum, or there is a probability that the delay in the investigation or trial occasioned by further proceedings relating to subpoena would threaten the interests of justice. (In the latter event, however, the person or business possessing the materials is still afforded an opportunity to submit an affidavit to the court setting forth the basis for its contention that the materials sought are not subject to seizure).[19] Such applications for search warrants are to be approved by the Attorney General or the County Prosecutor in advance of their submission to the court.

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[19]These Amendments to the Shield Law were no doubt in response to the United States Supreme Court's refusal to create similar rules on a constitutional basis. Zurcher v. Stanford Daily, 436 U.S. 56 L.Ed.2d 525, 98 S.Ct. 1970 (1978).

ROLE OF THE PROSECUTORS SUPERVISORY SECTION

The Attorney General is the chief law enforcement officer of the State of New Jersey. It is the public policy of this State to encourage cooperation among all law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General in order to secure the benefits of a uniform and efficient enforcement of the criminal law and administration of justice throughout the State. N.J.S.A. 52:17B-98.

All functions, powers and duties of the Attorney General pertaining to the enforcement and prosecution of the criminal laws are exercised through the Division of Criminal Justice. N.J.S.A. 52:17B-101. The Director of the Division of Criminal Justice has designated the Prosecutors Supervisory Section to assist him carry out the Attorney General's responsibility to consult with and advise the county prosecutors in matters relating to the duties of their office and to maintain a general supervision over prosecutorial efforts. N.J.S.A. 52:17B-103. Some of the supervisory activities undertaken by the section in furtherance of this mandate include the review and disposition of complaints received from all sources concerning the handling of cases and other matters by the offices of county prosecutor, the review of witness immunity petitions received from county prosecutors to be approved by the Attorney General, the monitoring of pre-employment security clearances of county prosecutor personnel and the monitoring of indictments and convictions of public officials and

state-licensed individuals received from county prosecutors. Periodic financial audits of each office's confidential fund, petty cash fund and confiscated monies accounts are also coordinated by the section.

While the Prosecutors Supervisory Section is responsible for maintaining a general supervision of county prosecutors on behalf of the Director, the relationship is largely one of mutual support and cooperation. In great measure, the efforts of the Prosecutors Supervisory Section are geared toward providing coordinative assistance to county prosecutors' offices in matters affecting prosecution. These efforts are undertaken with a view toward obtaining effective and uniform enforcement of the criminal laws.

The Prosecutors Supervisory Section is the primary liaison between the Attorney General and Division of Criminal Justice and the county prosecutors. In this capacity, a major activity is to coordinate the rendering of formal and informal advisory opinions to county prosecutors concerning various legal questions and policy considerations that arise on a regular basis. The section also facilitates the resolution of prosecution matters involving the various bureaus and sections of the Division of Criminal Justice and monitors the development of legislative initiatives and progress of pending legislation affecting county prosecutors.

The Prosecutors Supervisory Section also serves as liaison with other State criminal justice agencies. Matters of mutual concern are coordinated among and between the county prosecutors and various State agencies including the Division of State Police, the Administrative Office of the Courts, the Department of Human

Services, the Department of Corrections, the State Parole Board and the State Medical Examiner's Office. In its representative capacity on State level boards, committees and associations, the Prosecutor's Supervisory Section provides an additional voice to promote improvements in law enforcement and to represent the interest of the prosecution community. The Section actively encourages and assists in the development of interagency working groups to develop standards and guidelines to improve specific aspects of criminal justice operations. Prior efforts have included establishing minimum standards for the handling of child abuse and neglect investigations, guidelines on domestic violence and sudden death survivors, etc.

Another major effort of the Prosecutors Supervisory Section is to provide staffing assistance to the Count Prosecutors Association of New Jersey. Assistance is rendered in establishing the agendas and in conducting the periodic meetings of the Association with the Attorney General and the Director of the Division of Criminal Justice. The Section assists in undertaking any follow-up action resulting from these meetings. In addition, staff support is provided for the various association committees and in administering the Association's Scholarship Foundation.

The Prosecutors Supervisory Section is available to assist county prosecutors' offices by providing management and technical assistance services concerning office administration, legal problems, budgeting and related matters. Ongoing technical assistance is rendered to county prosecutors' offices upon request regarding various management problems encountered in the

administration of prosecution and investigation activities. Periodic management seminars for county prosecutors are developed and conducted in response to identified managerial problems and issues.

This section also serves as a clearinghouse for prosecution related information and emerging legal developments and alerts prosecutors of issues concerning prosecution. When information is needed regarding specific prosecutorial or law enforcement practices, statewide informational surveys are conducted and analyzed, and the results are disseminated as necessary.

In sum, the Prosecutors Supervisory Section provides varied types of assistance and guidance to county prosecutors in the administration of their offices. The activities of the section and the services rendered are geared toward securing the benefits of a uniform and efficient enforcement of the criminal laws throughout the State encouraging cooperation among law enforcement officers and generally providing for supervision and effective administration of criminal justice.

PROSECUTORS' ANNUAL REPORT TO ATTORNEY GENERAL

Administrative Analyst Judy Wheat
Division of Criminal Justice

The Criminal Justice Act of 1970 mandates that each County Prosecutor shall annually submit to the Attorney General a written report for the preceding year. This report shall cover such items of information and such dispositions of complaints, investigations, criminal actions and proceedings as the Attorney General shall prescribe. (N.J.S.A. 52:17B-111). This reporting system enables the Attorney General, through the Division of Criminal Justice, to secure, analyze and furnish County Prosecutors and other criminal justice agencies with information to further the goal of uniform and effective enforcement of the criminal laws throughout New Jersey. In addition, the Attorney General, through the Division of Criminal Justice, is statutorily required to provide an abstract of the County Prosecutors' annual reports to the Governor and the Legislature.

The information requested is designed to encompass the varied roles and responsibilities of the County Prosecutor. Primary responsibilities such as investigating, charging and prosecuting criminal activity are included in the report as well as responsibilities for representing the State's interest in the review of pre-trial intervention applications, appeals, post-conviction activities and prosecution of Juvenile offenders. The County Prosecutors' responsibilities for coordinating and supervising

investigations conducted jointly with other agencies and for serving the needs of victims and witnesses are also reflected in the present reporting system.

The County Prosecutors' Annual Report consists of statistical reporting requirements. To generate consistent reporting practices and reliable information, standardized units of measurement for prosecution activities, to be applied in all County Prosecutors' offices, have been identified and defined. The report provides workload and outcome measures for each major decision point in the prosecution process and covers the varied responsibilities of County Prosecutors.

Annual workload statistics document investigative efforts, prosecution efforts, special programs and miscellaneous activities. Statistical information is reported for significant activities, and investigative and prosecution actions which occur throughout the criminal justice process. Areas of statistical reporting include:

- Prosecutorial screening of defendants;
- Defendant applications for diversion programs, actions taken and outcome;
- Grand jury activities;
- Post-conviction activities;
- Career criminal program activities;
- Investigative workload and dispositions;
- Appellate workload and dispositions;
- Juvenile prosecution activities; and,
- Victim/Witness assistance.

The reporting system serves a dual purpose. It has been developed to meet the needs of the Attorney General, as chief law enforcement officer of the State, and to assist County Prosecutors in prosecutorial activities and office management.

The present system of standardized reporting for the twenty-one County Prosecutors' Offices will provide reliable information to document prosecution efforts throughout New Jersey. This is fundamental for understanding the nature of prosecution in the State, assessing the potential impact of any proposed changes in prosecution guidelines or policy and, where appropriate, determining the effectiveness of implemented procedures and programs.

Further, the statistical reporting requirement will provide County Prosecutors with a reliable information base to ascertain the performance of their own offices and document changes in workloads. Maintenance of this data base will assist internal management by providing evidence of how procedures and policy affect operations as well as providing evidence of what is actually occurring in the office. It will also provide statistics to project future caseloads and estimate consequences of proposed changes in policy or practice as well as to plan and justify budget requests. Comparisons of workloads from previous years and with other Prosecutors' Offices of similar size will be possible and could be used to support requests for additional resources and staff.

REFERRALS TO COUNTY PROSECUTORS

Assistant Director Ronald D. Sost
Division of Criminal Justice

The Attorney General and the Division of Criminal Justice regularly receive numerous items of correspondence, inquiries and complaints concerning the criminal justice process or some aspect of the law enforcement/criminal justice system. Such items are received from various sources, including citizens, victims and witnesses, other law enforcement agencies, public and private agencies, defendants and prison inmates. A significant number of these matters originally are reviewed by the Office of the Governor and referred to the Division of Criminal Justice. The Office of the Governor is interested in insuring that an appropriate response is prepared in a timely fashion.

The responsibility for screening such matters is centralized within the Information and Records Management Section, of the Division of Criminal Justice. Following intake and screening, these matters are either retained by the Division of Criminal Justice or referred to other State agencies, other law enforcement agencies, or to an appropriate County Prosecutor's Office. Complaints or matters which have no substance or contain insufficient information to warrant referral or investigation are closed.

During screening, Division personnel will check their files and indexes to determine whether any previous related correspondence or associated case file is being maintained. If a decision is made to refer the matter to a County Prosecutor's Office or other agency, a letter is prepared for transmittal along with the materials and attachment of all related material.

Referrals to County Prosecutor's Offices generally fall into two categories: those requiring some appropriate action, and those which are forwarded for informational purposes. A Prosecutor's Office received a referral should make a determination as to the appropriate course of action that should be taken in accord with its existing office procedures. In certain circumstances, it will be requested that a Prosecutor's Office notify the Division of Criminal Justice referencing our Criminal Justice numbers if a review of the referral vaults is an investigation or other formal legal proceeding.

SUPERSESSION

Deputy Attorney General Charles E. Waldron
Chief, Litigation Section
Division of Criminal Justice

The following describes various factors and procedures involving supersession by request of the County Prosecutor.

Matters in which a County Prosecutor considers that a conflict of interest may exist.

1. Those noted or suggested in court or ethics opinions and disciplinary rules. A file regarding these is kept in the Litigation Section of the Division of Criminal Justice.
2. Those in which a member of the staff is a potential defendant or victim.
3. Those involving close personal relationships between staff members and potential defendants or victims.
4. Those involving blood relationships between staff members and potential defendants or victims.
5. Those involving areas of sensitivity pertaining to political and/or business relations between staff members and potential defendants or victims.
6. Those involving former representation of defendants by attorneys who are presently members of the Prosecutors Office.

The areas noted above are merely areas where conflicts have been frequently noted in the past. It is not an exclusive list.

The facts that exist in every case must be given individual consideration by both the County Prosecutor and the Division of Criminal Justice in order to assure that even the appearance of conflict of interest is avoided.

Initiation of Supersession

1. Matters in which a County Prosecutor considers that a conflict of interest does or may exist should be forwarded to Deputy Director John Holl of the Division of Criminal Justice with a letter setting forth the conflict, and either requesting supersession or requesting an opinion as to whether the situation warrants supersession.
2. This must be done as soon as the apparent conflict is noted.
3. Upon receipt of the letter from the County Prosecutor, Deputy Director Holl will review the request and make a determination as to whether the Division of Criminal Justice will supersede.
4. This decision will be promptly communicated to the County Prosecutor by letter indicating the reason therefore.

Transfer of File

1. Once supersession has been accepted and the Prosecutor has been so informed by letter, the <u>original</u> file should be forwarded to Supervising State Investigator James Stowe of the Litigation Section of the Division of Criminal Justice.

2. In instances where the conflict is obvious or where prior verbal acceptance has been communicated to the prosecutor, the original file should be forwarded to James Stowe at the time the initial letter requesting supersession is sent to John Holl.
3. The County Prosecutor should keep a complete copy of the file as it is constituted on the day of transferral.
4. Should the conflict be resolved, the original file will be returned to the Prosecutor's Office.

Responsibility After Supersession

1. If the Division of Criminal Justice supersedes in the matter, it will be handled by the Litigation Section of the Division of Criminal Justice or where warranted the appropriate investigative section of the Division of Criminal Justice.
2. The Litigation Section will notify the appropriate courts, police departments and witnesses that the Division of Criminal Justice has superseded in the case with the name of the Deputy Attorney General who is to be contacted regarding the matter.
3. During the time that the Division of Criminal Justice is responsible for the case, any inquiries about the matter should be directed to the Deputy Attorney General from the Litigation Section who is responsible for it.
4. Although supersession of the matter by the Division of Criminal Justice because of an appearance of conflict requires that the matter be handled entirely by the

legal and investigative staff of the Division of Criminal Justice, any assistance that can be offered by the County Prosecutor's Office in the form of a place to work, a telephone and emergent support will lead to the most effective and efficient handling of the matter.

Final Disposition

When a matter has reached final disposition in the Division of Criminal Justice, the County Prosecutor, local police department and witnesses will be notified of that disposition by letter. The Division of Criminal Justice will maintain possession of the original file in these instances.

NOTIFICATION OF INDICTMENTS/CONVICTIONS OF PROFESSIONALS AND PUBLIC OFFICIALS

Deputy Attorney General Wayne J. Forrest
Division of Criminal Justice

Introduction

In order to ensure the effective implementation of N.J.S.A. 2C:51-2 (Forfeiture of Public Office), N.J.A.C. 10:49-1.17(j)5 (Conditions for Suspension), Executive Order No. 34 (Byrne 1976) and Regulation No.2 of the Disciplinary Review Board (as approved by the Supreme Court on April 11, 1978), the Attorney General and the County Prosecutors have developed a reporting system to assist the appropriate State agencies in this effort.

As a part of this reporting system the Division of Criminal Justice functions as the liaison between the 21 County Prosecutors and the appropriate State agencies. To facilitate the collection of the necessary information the procedures contained herein have been established.

Special Notice of Indictment/Conviction Report

1. The Special Notice of Indictment/Conviction Report must be completed for each public official, public employee, professional board licensee, actual or potential State contractor and medical/health service provider who is either indicted or convicted.
2. Immediately following an indictment a Special Notice of Indictment/Conviction Report - Original Notice must be submitted with a copy of the Indictment attachment.

3. Once a copy of the Judgment of Conviction becomes available, if at all, a second Special Notice of Indictment/Conviction Report - Supplemental Notice must be submitted along with a copy of the Judgment of Conviction.

Instructions of Completing the Special Notice of Indictment/Conviction Reports (Numbers relate to the specific entries to be completed on the Form):

1. AGENCY AND CASE FILE NUMBER: Check appropriate block for Agency or Section. Indicate County (if submitted by Prosecutor's Office, or Division Section if submitted from within the D.C.J.). Indicate Prosecutor's file number, or the Division of Criminal Justice file number, or the Division of Criminal Justice file number assigned to the Notice in the space provided. The Division of Criminal Justice must cross-reference its file number to that of the submitting Prosecutor's Office in order to match supplemental notices with original notices;
2. TYPE OF NOTICE AND DATE FORWARDED: Check block (a) if submitting an Original Notice, or block (b) if a Supplemental Notice. Original Notices are to be submitted upon indictment. Information relating to dispositions will usually not be available at that time and should not be submitted at a later date on a Supplemental Notice basis. Insert the date the Notice is sent to either the Prosecutors Supervisory Section or the IRMS Section in the space provided;

3. TYPE OF DEFENDANT INVOLVED: Check the appropriate block for the type of defendant involved and fill in the required information under subsection (a), (b), (c), or (d):

a. Public Employee/ Official. Notices of indictment or conviction are to be submitted whether or not the offenses charged relate to the employee's or official's public duties. Indicate the municipal, county, or State agency with which the public employee or official is employed and the position held;

b. Professional Board Licensee. Notices are to be submitted whenever or not the offense charged relates to the person's State licensed activities. Indicate one of the following professional board/licensing agencies or licensed agencies or licensed occupations.

ABC licensee
Architects
Attorneys
Barber Examiners
Beauty Culture
Casino Control Commission
CPA's
Dentistry
Electrical Contractors
Environmental Protection Agency
Insurance
Marriage Counselor Examiners
Master Plumbers
Medical Examiners (Physicians, biolaboratories, etc.)
Mortuary Science
Nursing
Ophthalmic Dispensers & Technicians
Optometrists
Pharmacists
Professional Engineers & Land Surveyors
Professional Planners
Psychological Examiners
Racing Commission
Realtors
Shorthand Reporting
Teachers
Veterinarian

c. Potential State Contractor: Business: Notices should be submitted whenever a business, company, firm, or contractor supplying goods or services is indicted or convicted for any offense indicating a lack of business integrity or honesty. Indicate business in space provided (Executive Order No. 34, Byrne 1976, Par. 4);

d. Medical/Health Service Provider: Service: Notices should be submitted whenever an individual or business entity involved in the delivery of medical or health services is indicated or convicted for any offense. Indicate service in the space provided. Medical and Health care services include the following:

Ambulance and Transportation Service	Nursing Homes
Clinical Laboratories	Optical Services
Dentists	Optometrists
Health Care Clinic	Out-Patient Hospitals & Clinics
Home Health Agencies	Pharmacists
In-Patient Hospital Services	Physicians and Surgeons
Medical Supplies	Podiatrists
Mental Hospitals	Psychiatrists or Psychologists

4. DEFENDANT'S NAME: Provide defendant's individual name or business firm's name and identifiers, as appropriate;

5. TRADING AS: Provide defendant's trade name, if appropriate;

6. DEFENDANT'S ADDRESS: Provide address of public employee, official licensee, service provider or business firm, as appropriate;

7. EMPLOYER'S NAME AND ADDRESS: Provide identity of defendant's employer and address as appropriate;

8. DATE OF: INDICTMENT/CONVICTION: Check block (a) for an indictment and indicate date returned in the space provided. Check block (b) if convicted and indicate date judgment of conviction was entered (defendant was sentenced) in the space provided;

9. CHARGES: Briefly list the charges specified in the indictment;

10. DISPOSITION: Provide the disposition of the case, to include the charges resulting in conviction where they differ from, or do not include all of the charges as specified in the indictment. Also indicate disposition of case, if other than conviction;

11. SUBMITTED BY/TITLE: Insert the name and title of person submitting the form;

12. ATTACHMENTS: Attach a copy of indictment, judgment of conviction and/or any notice of forfeiture of position. Check proper block for attachment submitted: (a) for copy of indictment; (b) for notice of forfeiture of position; (d) for copy of plea to accusation.

Routing of Special Notice of Indictment/Conviction Report

1. County Proscutor's Offices shall submit its report to the Prosecutor's Supervisory Section at the following address:

Division of Criminal Justice
Attn: Prosecutor's Supervisory Section
Richard J. Hughes Justice Complex
25 Market Street
CN 085
Trenton, New Jersey 08625

2. Sections of the Division of Criminal Justice shall submit its reports directly to the Chief, Information and Records Management Section (IRMS).

SPECIAL NOTICE OF INDICTMENT/CONVICTION

1. Agency and Case File Number

a. ☐ _____ Co. Pros. No. _____

b. ☐ D.C.J. File No. _____

c. ☐ D.C.J. Section _____

2. Type of Notice and Date Forwarded

a. ☐ Original Notice. . . . . Date Forwarded _____

b. ☐ Supplemental Notice. . . . . Date Forwarded _____

3. TYPE OF DEFENDANT INVOLVED:

a. ☐ Public Employee/Official

Position held: _____

Government Agency: _____

b. ☐ Professional Board Licensee

State Board/Licensing Agency: _____

c. ☐ Potential State Contractor; Business: _____

d. ☐ Medical/Health Service Provider; Service: _____

4. Defendant's Name: _____ S.S.# _____

D.O.B. _____

5. Trading as: _____

6. Defendant's Address: _____

7. Employer's Name : _____

Address: _____

8. Date of: Indictment _____ Accusation _____ Conviction _____

9. Charges: _____

_____

_____

10. Disposition: _____

_____

_____

11. Submitted by: _____ Title: _____

☐ INDICTMENT COPY ATTACHED ☐ JUDGMENT OF CONVICTION ATTACHED

☐ FORFEITURE ORDER ATTACHED ☐ ACCUSATION ATTACHED

SPECIAL NOTICE OF INDICTMENT/CONVICTION

1. Agency and Case File Number

a. ☐ _____ Co. Pros. No. _____

b. ☐ D.C.J. File No. _____

c. ☐ D.C.J. Section _____

2. Type of Notice and Date Forwarded

a. ☐ Original Notice. . . . . Date Forwarded _____

b. ☐ Supplemental Notice. . . . . Date Forwarded _____

3. TYPE OF DEFENDANT INVOLVED:

a. ☐ Public Employee/Official

Position held: _____

Government Agency: _____

b. ☐ Professional Board Licensee

State Board/Licensing Agency: _____

c. ☐ Potential State Contractor; Business: _____

d. ☐ Medical/Health Service Provider; Service: _____

4. Defendant's Name: _____ S.S.# _____

D.O.B. _____

5. Trading as: _____

6. Defendant's Address: _____

7. Employer's Name : _____

Address: _____

8. Date of: Indictment _____ Accusation _____ Conviction _____

9. Charges: _____

_____

_____

10. Disposition: _____

_____

_____

11. Submitted by: _____ Title: _____

☐ INDICTMENT COPY ATTACHED ☐ JUDGMENT OF CONVICTION ATTACHED

☐ FORFEITURE ORDER ATTACHED ☐ ACCUSATION ATTACHED

GRAND JURY PRESENTMENTS

Assistant Director Ronald D. Sost
Division of Criminal Justice

On a number of occasions, Grand Juries choose to handle concerns by presentments rather than indictments because of the specific factors in the case. Many of these presentments contain recommendations that should be brought to the attention of the Division of Criminal Justice, other County Prosecutors, various State agencies, and perhaps, the Legislature. For this reason, the Division of Criminal Justice serves as a central filing point for copies of all Grand Jury presentments.

The Division will be responsible for:

1. Maintaining an index and permanent reference bank of all presentments filed.
2. Forwarding to the appropriate Prosecutor's Office, section within the Division of Criminal Justice and/or outside agency, presentments that are relevant to its particular area of interest for their information, and
3. Following up any responses that may be desirable or necessary.

Presentments should be forwarded to the Chief, Information and Records Management Section, Division of Criminal Justice.

WITNESS IMMUNITY PETITIONS

Deputy Attorney General Gregory J. Sakowicz
Prosecutor's Supervisory Section
Division of Criminal Justice

This section will deal with the mechanics of submitting witness immunity petitions for the Attorney General's approval as required by N.J.S.A. 2A:81-17.3. A discussion of the substantive law on this topic, as well as the criteria involved in deciding to seek immunity, may be found in the 1987 New Jersey (Revised) Grand Jury Manual, beginning at page 45. Because N.J.S.A. 2A:81-17.4 requires that the Attorney General includes specific immunity statistics in his annual report to the Governor and Legislature, it is necessary that the prescribed format be followed and that a timely report be made following the court appearance. These reports are captioned Results of Witness Immunity Petitions. A copy is included at the end of this section.

1. Petitions and support documents should be sent to:

   Prosecutors Supervisory Section
   Division of Criminal Justice
   Richard J. Hughes Justice Complex
   25 Market Street, CN 085
   Trenton, New Jersey 08625

   Do not send directly to the Attorney General.

2. Materials should be received by the Prosecutors Supervisory Section at least 10 days prior to the prospective witness' scheduled appearance. If possible, appearances should not be scheduled until the petition has been approved by the Attorney General and

returned to the prosecutor.

3. Materials submitted to the Prosecutors Supervisory Section must include the following:

a. a cover letter setting forth
   (i) a statement of facts,
   (ii) a summary of reasons underlying the decision to immunize/compel the testimony of a particular witness,
   (iii) a reference to the anticipated date when this petition may be needed and
   (iv) the identity of an assistant prosecutor who can, if necessary, discuss this matter and provide additional information.

b. the original petition

   (i) captioned in the matter in which the compelled/immunized testimony is to be used,
   (ii) a brief factual summary in numbered paragraphs,
   (iii) signed and dated by the prosecutor, not an assistant prosecutor and
   (iv) a signature block for the Attorney General below and to the left of the prosecutor's signature, for example:

APPROVED:

_____
W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY

DATED: _____

c. supporting documents, for example:

   (i) transcript of any recorded statement made by the prospective witness,
   (ii) criminal history summaries of person to be immunized and person against whose testimony will be offered and
   (iii) any other documents, the prosecutor decides to forward

d. A "fact sheet" on the prospective witness and each identified defendant or target aginst whom

the immunized testimony is intended to be used, containing

(i) name
(ii) aliases
(iii) address
(iv) date of birth
(v) social security number
(vi) FBI number
(vii) SBI number
(viii) whether the witness, defendant or target has a prior criminal record

4. Approved petitions will be returned to the submitting prosecutor's office by mail unless other arrangements have been made.

5. The returned petitions will have attached blank "Results of Witness Immunity Applications" which must be completed and returned to the Prosecutors Supervisory Section at the conclusion of the proceeding in which the immunized testimony was intended to be utilized whether or not it was in fact utilized.

6. A proposed immunity petition may indicate that the Attorney General's approval is being sought for purposes of both grand jury and trial of any resulting indictment.

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. 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.

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.

REPORT TO THE ATTORNEY GENERAL

Results of Approved Witness Immunity Applications

County :_____

DCJ Section :_____

PPS or CJ Number :_____

Date :_____

1. Defendants Name(s) and Case File No(s): _____

_____

2. Nature of Charges against each Defendant: _____

_____

3. Name of Witness Granted Immunity: _____

_____

4. Initial Results:	Yes	No
a. Was petition used following approval of the Attorney General:	___	___
b. Was immunity granted by the Court:	___	___
c. Did witness testify under grant of immunity:	___	___
d. Did witness testify voluntarily without immunity:	___	___

Comments: _____

_____

5. Dispositional Results:

a. Indictments dismissed as a result of the approval of immunity and nature of charges involved.

Indictment No.	Nature of Charges
_____	_____
_____	_____

b. Final Disposition of Case by Defendant(s) and Charges(s):

Defendant	Charge	Disposition (plea, conviction, dismissal)
_____	_____	_____
_____	_____	_____
_____	_____	_____

c. Was testimony of witness vital to the investigation or prosecution and/or was it determinative of the result in the case:

_____

_____

d. Number of persons adjudged in contempt for refusal to testify as a result of the grand of immunity: _____

e. Number jailed as a result of refusal: _____

f. Number who purged themselves after being jailed: _____

6. Submitted by: _____ Title: _____

ANNUAL WIRETAP REPORT

Judy Wheat, Administrative Analyst
Division of Criminal Justice

FEDERAL REPORTING REQUIREMENTS

Prosecutors are required to submit reports annually on the use of court authorized electronic surveillance to the Administrative Office of the United States Courts. In addition, judges who approve or deny orders permitting the use of electronic surveillance are required to report. These reports are required by the wiretapping and electronic surveillance reporting provisions of Title III (18 U.S.C. Subsection 2519). (Title 18 U.S.C. 2519). Four-ply pre-printed report forms are available from the Administrative Office of the United States Courts. (See Exhibit A).

The federal report is to be initiated by the prosecutor who made application for electronic surveillance. If an order was granted permitting the use of electronic surveillance, the federal report (items 1 through 8) should be completed and provided to the issuing judge at the time of sealing. The federal electronic surveillance report should accompany the order requesting the

sealing of the tapes used during the intercept.[1] After completing items 1 through 8 of the federal form, the prosecutor is to submit the first two copies of the form to the judge issuing the electronic surveillance order. The judge will forward one copy to the Administrative Office of the U.S. Courts within 30 days after expiration of the completed period of the intercept. The second copy will be retained for the judge's file.

The prosecutor will retain two copies of the form. In January of the following year, the additionally requested information on the form, items 9 through 12 are to be completed and one copy of the form is to be forwarded to the Administrative Office of the U.S. Courts. The final copy is to be retained for the prosecutor's files.

Information contained in the federal reports, submitted by both the issuing judge and the law enforcement agencies which have utilized court authorized electronic surveillance during the calendar year, is compiled by the Administrative Office of the U.S. Courts and presented in a national report. This published report is submitted to the U.S. Congress in April of each year and subsequently distributed as a public document.

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[1]If an order was issued permitting electronic surveillance and the intercept was not implemented, the federal report form is to be completed and forwarded to the judge following the determination that the intercept would not or could not be implemented. If an order was issued denying electronic surveillance, the report form is to be completed and forwarded to the judge leaving the judge adequate time to comply with reporting requirements.

STATE REPORTING REQUIREMENTS

A. Court-Ordered Electronic Surveillance

"In addition to reports required to be made by applicants pursuant to Federal Law, the Attorney General shall make annual reports on the operation of this act to the Administrative Director of the Courts. The reports by the Attorney General shall contain (1) the number of applications made; (2) the number of orders issued; (3) the effective periods of such orders; (4) the number and duration of any renewals thereof; (5) the crimes in connection with which the conversations were sought; (6) the name of the applicants; (7) the number of indictments resulting from each application; (8) the crime or crimes which each indictment charges; and (9) the disposition of each indictment." (N.J.S.A. 2A:156A-23b).

To provide the required information, a copy of the completed federal report is to be submitted to the Division of Criminal Justice, on behalf of the Attorney General, along with a completed state form, Report Addendum N.J.S.A. 2A:156A-1 (Exhibit B). These forms are to be submitted for each electronic surveillance order requested, whether the order is granted, denied or withdrawn. The revised state form, introduced for use in 1986, was designed to capture information pursuant to state statute which is not captured on the required federal form. This form does not replace the federal form but is to be used and submitted in conjunction with and as an addendum to the federal form.

The completed addendums, along with copies of the corresponding federal electronic surveillance reports, are to be

filed at the close of the report year (no later than January 31st of the following year). Electronic surveillance data is to be filed in that report year in which the wiretap or intercept was terminated. If the county engaged in no electronic surveillance during the calendar year, the Division of Criminal Justice should be so advised in writing.

The information reported will be compiled and submitted pursuant to statute to the Governor, Legislature and New Jersey Administrative Office of the Courts. The report provides an overview of the use of court-ordered electronic surveillance in the state and includes the relevant statistical data concerning authorized intercepts.

Follow-up, dispositional information or additional activity on court-authorized intercepts occurring in previous years should be reported on the Supplementary Report Form described below in section C.

B. Consensual Interceptions

In addition to requiring reports on all court-authorized intercepts, state statute requires reports to the Attorney General on the use of consensual intercepts, both third party and non-third party intercepts.

1. Consensuals Authorized by the County Prosecutor, Third-Party Consensuals (N.J.S.A. 2A:156A-4c).

"The Attorney General and the county prosecutor shall maintain records of all interceptions authorized by them pursuant to section 4 c., on forms prescribed by the Attorney General. Such records shall include the name of the person requesting the

authorization, the reasons for the request, and the results of any authorized interception. The Attorney General shall require that copies of such records maintained by county prosecutors be filed with him periodically and he shall report annually to the Governor and Legislature on the operation of section 4 c." (2A:156A-23d).

2. Investigative or Law Enforcement Officer Consensuals, Non-Third Party Consensuals (N.J.S.A. 2A:156A-4b).

"It shall be the obligation of all law enforcement agencies in the State to file with the Attorney General on forms prescribed by the Attorney General information pertinent to the operation of section 4 b. The information on the forms shall include, but not be limited to (1) the name of the investigative or law enforcement officer making the interception; (2) the law enforcement agency employing the officer involved in the interception; (3) the character of the investigation or activity involved; and (4) the results of such activity." (2A:156A-23c).

The revised consensual intercept report form, introduced in 1986, is for use with both third party and non-third party (law enforcement) consensuals and replaces the two consensual intercept report forms previously used. (See Exhibit C).

A Consensual Intercept Report form is to be completed for each third party and non-third party consensual intercept sought or used by county prosecutor's offices, local police departments and other law enforcement agencies. Non-third party reports are to be filed with the Division of Criminal Justice, on behalf of the Attorney General, quarterly (within sixty days of the quarter end). Third party reports are to be filed with the Division at

the close of the report year (no later than January 31st of the following year). Consensual intercept data is to be filed in that report year (or quarter if a non-third party intercept) in which the intercept was terminated.

Consensual intercept reports are to be submitted to the Division of Criminal Justice by county prosecutors and should include the activity of all local law enforcement agencies within that particular county. If neither the county nor any local law enforcement agency had any consensual intercepts, the Division of Criminal Justice should be so advised in writing. Since no formal authorization is required for the use of non-third party intercepts, care should be taken to assure that a report is filed for each intercept used. It is not necessary to submit a copy of third party consensual applications. Any extension or renewal application for third party intercepts should be reported as such and not as an original authorization. If extensions or renewals are reported as original authorizations, the number of original authorizations will be artificially inflated and will create a misleading impression concerning the use of consensual intercepts.

The information reported will be compiled and submitted to the Governor and Legislature according to statute. The report provides an overview of the operation of relevant aspects of the Wiretap Act.

If neither the county nor any local law enforcement agency had any consensual intercepts, the Division of Criminal Justice should be so advised in writing. Since no formal authorization is

required for the use of non-third party intercepts, care should be taken to assure that a report is filed for each intercept used.

C. New Jersey Electronic Surveillance Supplementary Report

The New Jersey Electronic Surveillance Supplementary Report (Exhibit D) is for use in providing follow-up information for either court-ordered electronic surveillance, third party consensual intercepts or non-third party consensual intercepts. The currently used form, introduced in 1986, is to be used to report any additional results, arrests, dispositions or administrative actions.

A separate supplementary report form should be completed for each intercept category: (1) court-ordered; (2) third party; and (3) non-third party. Several intercepts of the same category may be reported on one form.

The additional activity data reported on the supplementary forms will be used to update intercept reported as pending at the close of previous report years. The outcome of intercepts will be tracked to completion of the investigation. Likewise, the disposition of arrested subjects will be tracked to the final disposition. The information provided will be compiled and reported annually in conjunction with the report on the use of wiretaps or consensual intercepts.

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EXHIBIT A

Form 1 (Rev. 1/87)	REPORT OF APPLICATION AND/OR ORDER AUTHORIZING INTERCEPTION OF COMMUNICATION EFFECTIVE JANUARY 20, 1987	Application Number (Optional)	Docket No. 00351

Report Prepared By	Telephone No. (Area Code)

MAIL COMPLETED FORM TO: Director, Administrative Office of the United States Courts, Attn: SARO W/T Washington, D.C. 20544

AUTHORIZING OR DENYING THE INTERCEPT

Name of Judge	Mailing Address		
County & Court	City or Town	State	Zip Code

2A. OFFICIAL MAKING APPLICATION	2B. PROSECUTION OFFICIAL AUTHORIZING APPLICATION SHOW "SAME" IF SAME AS 2A
Name	Name
Title / Telephone No. (Area Code)	Title / Telephone No. (Area
County & Agency Name	County & Agency Name
Mailing Address / Zip Code	Mailing Address / Zip

☐ Ordinary Specification Order

☐ Relaxed Specification Order. (If this box is checked, also check "Re... under Item 7.)

DURATION OF INTERCEPT

ORDER OR EXTENSION		NUMBER OF DAYS	DATE OF APPLICATION	CHECK ONE: DENIED	CHECK ONE: GRANTED	GRANTED WITH THESE CHANGES	DATE T... OR DAY
ORIGINAL REQUEST							
Extensions	1st						
	2nd						
	3rd						
Total Number of Days Authorized							

TYPE OF INTERCEPT / PLACE / INSTALLA...

☐ Phone Wiretap

☐ Microphone/ Eavesdrop

☐ Other (Specify) _____

☐ Single Family Dwelling—*e.g. detached home, semi-detached, townhouse, rowhouse, duplex.*

☐ Apartment—*e.g. garden style, low rise, high rise, self-contained private room or apartment within a house, condominium.*

☐ Multiple Dwelling—*e.g. boarding house with common telephones, dormitory.*

☐ Business (Specify Type) _____ *e.g. store, restaurant, motel business, coffee shop.*

☐ Roving – authorized by relaxed specification order.

☐ Other (Specify) _____ *e.g. trailer, mobile home, boat, automobile, pay phone, motel room, social club.*

☐ NEVER INSTA...

☐ INSTALLED B... NOT USED

☐ INSTALLED A... USED

COMMENTS

Please use the reverse to give any further explanatory remarks. Do NOT include the names, addresses or phone numbers of any individuals or places involv... the communication intercept.

Judge's Signature	Date of Report

INSTRUCTIONS

THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, TITLE 18 U.S.C. 2519, REQUIRES THAT REPORTS MUST BE MADE... THE ADMINISTRATIVE OFFICE OF UNITED STATES COURTS BOTH BY THE PROSECUTING OFFICIAL WHO APPLIES FOR AND BY T... JUDGE WHO APPROVES OR DENIES AN ORDER PERMITTING INTERCEPTED COMMUNICATIONS. THIS 4-PLY PRE-NUMBERED FORM... DESIGNED SO THAT INFORMATION COMMON TO BOTH THESE REPORTS (i.e. ITEMS 1 THRU 8) NEED BE TYPED ONLY ONCE, BY T... OFFICE OF THE PROSECUTOR, WHEN THE REPORT IS INITIATED. *COPIES OF THE FORM ARE DISPOSED OF AS FOLLOWS: PLY 1* - IS TO... FORWARDED BY THE JUDGE TO THE ADMINISTRATIVE OFFICE OF U.S. COURTS WITHIN 30 DAYS OF A DENIAL DATE, IF APPLICATI... IS DENIED, OR, IF IT IS APPROVED, WITHIN 30 DAYS AFTER EXPIRATION OF THE COMPLETE PERIOD OF THE INTERCEPT i.e. ... ORIGINALLY REQUESTED PERIOD PLUS ANY EXTENSIONS; *PLY 2* - IS FOR THE JUDGE'S FILES; *PLY 3* - IS TO BE RETAINED ... PROSECUTING OFFICIAL UNTIL JANUARY OF THE FOLLOWING YEAR, THEN COMPLETED AND FORWARDED TO THE ADMINISTRATI... OFFICE; *PLY 4* - IS FOR PROSECUTOR'S FILES.

PLY-1 JUDGE FORWARDS TO THE ADMINISTRATIVE OFFICE PER INSTRUCTIONS ABOVE

Persons Arrested	Arrest Offenses	Motions to ... Granted	Motions to ... Denied

11C. No. of Persons Convicted	Conviction Offenses	11D. Number of ... Completed

Give an assessment of the importance of the interceptions in obtaining convictions. Use the back of the form if necessary. List the application number(s) ... related wiretaps (if applicable). Do NOT include the names, addresses or phone numbers of any individuals or places involved in the communication ...

Signature of Authorizing Prosecutor	Date of Report

County _____

EXHIBIT B

Agency Wiretap/Application No. _____

COURT-ORDERED ELECTRONIC SURVEILLANCE

Judge's Wiretap No. _____

REPORT ADDENDUM N.J.S.A. 2A:156A-1

Pros. Office File No. _____

A. APPLICATION DATA AND INTERCEPT RESULTS

1. Prosecution official co-authorizing application. _____

2. Application applies to more than one telephone facility number.

No ☐ Yes ☐ If yes, how many orders were entered. ____

3. Outcome of Investigation (Check one response)

☐ Resulted in arrests (See below, Dispositional Data.)

☐ Resulted in arrests, dispositional data reported with related wiretap.

Related wiretap number _____

☐ Resulted in arrests, referred for criminal prosecution in other jurisdiction.

Agency referred _____

☐ Pending further investigation, no arrests to date.

☐ No arrests, referred for criminal prosecution.

Agency referred _____

☐ Closed, no arrests.

☐ Other (explain) _____

B. DISPOSITIONAL DATA (Complete information below for each individual arrested and retained for prosecution within your jurisdiction.)

1. Name	2. Indicted or Charged by Accusation List Ind./Acc. Nos.	3. Most Serious Offense	4. Disposition

Name and Title of Person Completing Report (Telephone No.) _____ Date _____

(P. 6-35--THERE PROBABLY IS NO 6-35)

Court-Ordered Electronic Surveillance

Report Addendum N.J.S.A. 2A:156A-1

The present form is for use in reporting court-authorized electronic surveillance information pursuant to state statute, information which is not captured on the required federal report form. This form replaces the previous state "Court Ordered Electronic Surveillance Report" and is designed for use in conjunction with and as an addendum to the federal form. Rather than reporting the same information on two separate forms, copies of the federal forms along with report addendums will be filed with the state.

Beginning 1986, report addendum is to be completed for each electronic surveillance order requested, whether the order is granted, denied or withdrawn. If an application is submitted which applies to more than one telephone facility number and more than one order is entered, complete a separate addendum report for each order. The completed addendums, along with copies of the corresponding federal electronic surveillance reports, are to be filed at the close of the report year (no later than January 31st of the following year). Electronic surveillance data is to be filed in that report year in which the wiretap/intercept was terminated. Forward reports to the Division of Criminal Justice, attention Assistant Director Michael Bozza.

Upon receipt of the forms, the Division of Criminal Justice will report annually to the governor, legislature and New Jersey Administrative Office of the Courts concerning electronic surveillance activity within the state. To more accurately report electronic surveillance activity, greater emphasis will be placed on dispositional data and accuracy overall.

Completion of the Report Addendum

IDENTIFICATION INFORMATION

County--report the name of the county requesting the electronic surveillance order and generating the present report.

Agency Wiretap/Application No.--report the number assigned to the present wiretap application within the prosecuting agency requesting authorization for electronic surveillance, that number which references the "Application Number" reported on the corresponding federal form.

Judge's Wiretap No.--if request granted, report the number assigned to the wiretap by the authorizing judge.

Prosecutor's Office File No.--that number which references the specific case within the prosecutor's office internal records/filing system and which will enable future updates to track the final outcome of the investigation or disposition of arrested subjects.

A. APPLICATION DATA AND INTERCEPT RESULTS

1. Prosecution official co-authorizing application--if the application was authorized by more than one prosecution official, report the name, title and county of the co-authorizing official.

2. Application applies to more than one telephone facility number--using the boxes provided, indicate whether the application applied to more than one telephone number. If yes, indicate how many orders were ultimately entered.

3. Outcome of Investigation--check the one response which reflects the outcome of the overall investigation.

   Where indicated, report the additionally requested information.

D. DISPOSITIONAL DATA

Provide the specific dispositional data requested for each individual arrested or charged within your jurisdiction as a result of the present wiretap/intercept.

1. Name--last name, first name and middle initial.

2. Indicted or Charged by Accusation, List Ind./Acc. Nos.--indicate whether the subject was indicted or charged by accusation using the abbreviation 'Ind.' for indictment and 'Acc.' for accusation.

   If a subject is charged in more than one indictment or accusation originating from the present intercept, list all relevant indictment/accusation numbers.

3. Most Serious Offense--for each subject and each indictment/accusation reported, using the following list of offenses ordered by relative seriousness, indicate the most serious offense with which the subject is charged. If the subject is named in more than one indictment or accusation, note the most serious offense charged for each.

(1) Homicide
(2) Mayhem
(3) Kidnapping
(4) Robbery
(5) Arson
(6) Burglary
(7) Bribery
(8) CDS Violations
(9) Loansharking
(10) Theft/Larceny
(11) Extortion
(12) Embezzelement
(13) Receiving Stolen Property
(14) Forgery
(15) Weapons Violations
(16) Escape
(17) Gambling
(18) Casino Control Act Violations
(19) Unlawful Possession of Explosives or Bombs
(20) Alteration of Motor Vehicle Identification Numbers

4. Disposition--for each subject arrested and for each indictment/accusation, report the specific manner of disposition from the list below.

(1) Pending
(2) Referred to Municipal Court
(3) Administratively Dismissed
(4) Accepted into Diversionary Program
(5) No Billed and Remanded
(6) No Billed, No Further Action
(7) Referred for Criminal Prosecution
(8) Referred to Family Court (Juvenile Arrest)
(9) Guilty Plea
(10) Convicted, Trial
(11) Acquitted, Trial
(12) Dismissed
(13) Other (specify)

CONSENSUAL INTERCEPT REPORT

Agency Reporting _____

County _____

Intercept Termination Date _____

Consent No. _____

Case/File No. _____

Consent Nos. of Related Intercepts _____

☐ Third Party Consensual
N.J.S.A. 2A:156A-4(c)

☐ Non-Third Party Consensual
N.J.S.A. 2A:156A-4(b) (Law Enf.)

A. APPLICATION/AUTHORIZATION DATA

1. Requesting Agency _____

2. Investigating Officer _____

3. Date of Original Authorization and Outcome

Date _____ Granted ☐, No. days ___ Denied ☐ Withdrawn ☐

4. Date(s) of Renewal Application(s) and Outcome

#1 Date _____ Granted ☐, No. days ___ Denied ☐ Withdrawn ☐

#2 Date _____ Granted ☐, No. days ___ Denied ☐ Withdrawn ☐

#3 Date _____ Granted ☐, No. days ___ Denied ☐ Withdrawn ☐

#4 Date _____ Granted ☐, No. days ___ Denied ☐ Withdrawn ☐

#5 Date _____ Granted ☐, No. days ___ Denied ☐ Withdrawn ☐

5. Investigation Type
☐ Criminal
☐ Protection
☐ Other (explain) _____

6. Offenses (most serious first)
(a) _____ (c) _____
(b) _____ (d) _____

B. INTERCEPT DATA

1. Type of Intercept ☐ Onbody ☐ Telephone
☐ Room ☐ Vehicle ☐ Other _____

2. Installation
☐ Never installed or implemented
☐ Installed, not used
☐ Installed, used

3. Number of Days in Actual Use ____

4. Total Number of Conversations Monitored ____

5. Number of Incriminating Conversations Monitored ____

C. INTERCEPT RESULTS

1. Intercept resulted in court-ordered wiretap(s)

☐ No ☐ Yes, List related wiretap nos. _____

2. Arrest Activity (Check one response.)

☐ Resulted in arrests (See below, Dispositional Data)

☐ Resulted in arrests, data reported with concurrent court-ordered wiretap(s

List wiretap nos. _____

☐ Pending further investigation, no arrests to date

☐ No arrests

☐ Other _____

3. Referral Action (Check all responses that apply.)

☐ Referred for criminal prosecution, Agency referred _____

☐ Referred for civil or administrative action, Agency referred _____

☐ No referral

☐ Other _____

4. Administrative Action (Check all responses that apply.)

☐ Resulted in resignation, Number of individuals ____

☐ Resulted in dismissal, Number of individuals ____

☐ Resulted in loss of professional license, No. individuals ____

☐ Other (explain, note no. individuals) _____

D. DISPOSITIONAL DATA (Complete information below for each individual arrested.)

1. Name	2. Indicted or Charged by Accusation List Ind./Acc. Nos.	3. Most Serious Offense	4. Disposi

Name and Title of Person Completing Report (Telephone No.) Date

Consensual Intercept Report
N.J.S.A. 2A:156A-4(b) and (c)

The present, revised consensual intercept report form is designed for use with both non-third party (law enforcement) consensuals and third party consensuals pursuant to statutory requirements. This form replaces the two consensual intercept report forms previously used.

Beginning 1986, a report form is to be completed for each third party and non-third party consensual intercept sought by county prosecutors' offices, local police departments and other law enforcement agencies. As previously done, non-third party consensual reports are to be filed quarterly (within thirty days of the quarter end). Third party consensual reports are to be filed at the close of the report year (no later than January 31st of the following year). Consensual intercept data is to be filed in that report year (or quarter if a non-third party intercept) in which the intercept was terminated. Completed reports are to be forwarded to the Division of Criminal Justice, attention Assistant Director Michael Bozza.

Upon receipt of consensual intercept reports, the Division of Criminal Justice will complete this information and report annually to the Governor and Legislature. To more accurately report intercept activity statewide, greater emphasis will be placed on dispositional data and accuracy in general.

Completion of the Report

IDENTIFICATION INFORMATION

Using the boxes provided, indicate whether the present intercept is a third party consensual or non-third party consensual.

Report the agency generating the report, the county in which that agency is located if other than a state agency, the date on which the intercept was terminated, the consent number assigned to the present intercept, the case/file number which will enable future updates to track the final outcome of the investigation or disposition of arrested subjects, and the consent number of any related consensual intercepts. The case/file number requested is that number which references the specific case within the prosecutor's office or other law enforcement agency's internal records/filing system.

A. APPLICATION/AUTHORIZATION DATA

1. Requesting Agency--report the municipal, county, state or other law enforcement agency seeking authorization for the intercept.

2. Investigating Officer--report the last name, first initial and title of the officer conducting the interce

3. Date of Original Authorization and Outcome--report the outcome of the intercept application, whether the request was granted, denied or withdrawn, and the date. If granted, report the number of days for which the intercept was originally authorized.

4. Date(s) of Renewal Application(s) and Outcome--for each renewal application, report the outcome of the request (i.e., granted, denied or withdrawn) and the date. If granted, report the number of days for which each renewal intercept was authorized.

   If more than five renewals were sought, please append the relevant information, numbering in sequence each additional renewal application.

5. Investigation Type--indicate the type of investigation being conducted, criminal, protection or other. If 'other', explain.

6. Offenses--using the attached list of offenses ordered by relative seriousness, report the offenses, the most serious first, being investigated.

B. INTERCEPT DATA

In the manner provided on the form (check-off or write-in), report the specific intercept data requested.

1. Type of Intercept.
2. Installation.
3. Number of Days in Actual Use.
4. Total Number of Conversations Monitored.
5. Number of Incriminating Conversations Monitored.

C. INTERCEPT RESULTS

1. Intercept resulted in court-ordered wiretaps--indicate whether the present consensual intercept lead to court-authorized electronic surveillance. If yes, list the related wiretap number(s).

2. Arrest Activity--check one response and report any additionally requested information.

3. Referral Action--check all responses that apply and report any additionally requested information.

4. Administrative Action--check all responses that apply and indicate the number of individuals concerned. If 'other' is checked, specify the action and number of individuals concerned.

D. DISPOSITIONAL DATA

Provide the specific dispositional data requested for each individual arrested or charged within your jurisdiction as a result of the present consensual intercept.

1. Name--last name, first name and middle initial.

2. Indicted or Charged by Accusation, List Ind./Acc. Nos.--if the subject was indicted or charged by accusation, indicate such using the abbreviations 'Ind.' for indictment and 'Acc.' for accusation.

   If a subject is charged in more than one indictment or accusation originating from the present intercept, list each relevant indictment/accusation number.

3. Most Serious Offense--for each subject and each indictment/accusation reported, using the attached list of offenses ordered by relative seriousness, indicate the most serious offense with which the subject is charged. If the subject is named in more than one indictment or accusation, note the most serious offense charged for each.

4. Disposition--for each subject arrested and for each indictment/accusation, report the specific manner of disposition from the list below.

   (1) Pending
   (2) Referred to Municipal Court
   (3) Administratively Dismissed
   (4) Accepted into Diversionary Program
   (5) No Billed and Remanded
   (6) No Billed, No Further Action
   (7) Referred for Criminal Prosecution
   (8) Referred to Family Court (Juvenile Arrest)
   (9) Guilty Plea
   (10) Convicted, Trial
   (11) Acquitted, Trial
   (12) Dismissed
   (13) Other (specify)

EXHIBIT D

NEW JERSEY ELECTRONIC SURVEILLANCE

SUPPLEMENTARY REPORT

1. Agency Reporting and County _____

_____

2. Intercept Category (Check one response)

☐ Court-Ordered N.J.S.A. 2A:156-1

☐ Third Party Consensuals N.J.S.A. 2A:156A-4(c)

☐ Non-Third Party Consensuals N.J.S.A. 2A-156A-4(b) (Law Enforcement)

3. Orig. Report Year	4. Judge's Wiretap No./ Consent No.	5. Follow-up Results (Previously Not Reported)	6. Individuals Arrested			7. Indicted or Charged by Accusation (List Ind./Acc. Nos.)	8. Most Serious Offense	9. Disposition or Administrative Action
			Name	New Arrest	Prior Arrest			

New Jersey Electronic Surveillance

Supplementary Report

The New Jersey supplementary report form is for use in providing follow-up information for either court-ordered electronic surveillance, non-third party consensual intercepts or third party consensual intercepts.

Beginning 1986, the state supplementary forms are to be completed to report any additional results, arrests, dispositions or administrative actions. Do not report results, dispositions or administrative actions previously reported on either the original report or a prior supplementary report.

A separate supplementary report form must be completed for each intercept category (court-ordered, non-third party and third party). However, several intercepts of the same category may be reported on one form.

Completed supplementary report forms are to be forwarded to the Division of Criminal Justice, attention Assistant Director Michael Bozza, at the close of the report year (no later than January 31st of the following year).

Upon receipt, the additional activity data reported on the supplementary forms will be used to update intercepts reported as pending at the close of previous report years. The outcome of intercepts and disposition of arrested subjects. will be tracked to completion of the investigation or final disposition. A final outcome or result should be reported for all electronic surveillance. Likewise, a final disposition should be reported for every arrested subject.

Completion of the Supplementary Report

IDENTIFICATION INFORMATION

1. Agency Reporting and County--report the municipal, county, state or other law enforcement agency which originally conducted the intercept. If other than a state agency, report the respective county of that agency.

2. Intercept Category--indicate the specific intercept category to which the present supplementary form pertains, either court-ordered, third party consensual or non-third party consensual.

3. Original Report Year--report the year in which the intercept was first reported, that year in which the intercept was terminated.

4. Judge's Wiretap No./Consent No.--report the appropriate identifying number.

   If court-ordered, report the identification number assigned to the wiretap by the authorizing judge.

   If a consensual intercept, report the consent number assigned to the intercept by the agency which conducted the intercept.

   If more than wiretap or intercept is employed in conjunction with a single investigation, group related wiretaps together.

5. Follow-up Results--for each intercept reported as pending at the close of the previous report year, report a follow-up result from the list below. Do not report results previously reported.

   (1) Resulted in arrests previously not reported (see 6. Individuals Arrested).

   (2) Resulted in arrests previously not reported, data reported with concurrent or related wiretap(s). List the judge's wiretap numbers.

   (3) Resulted in arrests previously not reported, referred for criminal prosecution. Report agency referred.

   (4) No arrests, referred for criminal prosecution. Report agency referred.

   (5) No arrests, referred for civil or administrative action. Report agency referred.

   (6) Closed, no arrests and no referral.

6. Individuals Arrested--for each subject previously arrested and previously reported as pending disposition and for each new arrest, provide the subject's last name, first name and middle initial.

   Also, in the columns provided, check whether a new arrest or prior (previously reported) arrest.

7. Indicted or Charged by Accusation, List Ind./Acc. Nos.--for each individual arrested, indicate whether the subject was indicted or charged by accusation using the abbreviation 'Ind.' or 'Acc.'.

   If a subject is charged in more than one indictment or accusation originating from the present intercept, list each relevant indictment/accusation number.

8. Most Serious Offense--for each subject and each indictment/accusation reported, using the appropriate attached list of offenses ordered by relative seriousness, indicate the most serious offense with which the subject is charged. If the subject is named in more than one indictment or accusation, note the most serious offense charged for each.

   A separate list of ranked offenses is provided for court-authorized intercepts and consensual intercepts.

9. Disposition or Administrative Action--for each subject arrested and each indictment/accusation, report the specific manner of disposition from the list below.

   Report a disposition for every arrested individual previously reported as "pending" on the original report form or a prior supplementary report, as well as every new arrest reported on the present supplementary report.

Dispositions
(1) Pending
(2) Referred to Municipal Court
(3) Administratively Dismissed
(4) Accepted into Diversionary Program
(5) No Billed and Remanded
(6) No Billed, No Further Action
(7) Referred for Criminal Prosecution
(8) Referred to Family Court (Juvenile Arrest)
(9) Guilty Plea
(10) Convicted, Trial
(11) Acquitted, Trial
(12) Dismissed
(13) Other (specify)

In addition, report any administrative action that applied to a specific intercept and indicate the number of individuals concerned.

Administrative Actions
(1) Resignation
(2) Dismissal
(3) Loss of Professional License
(4) Other (specify)

GUIDELINES FOR ENFORCEMENT OF NEW JERSEY'S RACKETEERING ACT

Assistant Director Michael Bozza
Division of Criminal Justice

These guidelines provide internal law enforcement guidance with respect to New Jersey's Racketeering Act (N.J.S.A. 2C:41-1 et seq.). The guidelines are not intended and do not create any rights enforceable at law, by any party, in any matter, civil or criminal. Rather, the guidelines are a reflection of a policy of the deliberative, selective and uniform use of New Jersey's Racketeering Act in plain recognition of the extraordinary nature of this investigative tool.

I. In order to insure that New Jersey's Racketeering Act is only used after a carefully studied determination that its use is appropriate, a centralized review and approval function for all RACKETEERING matters is hereby instituted.

1. The New Jersey Racketeering Act confers upon the Attorney General, and by his designation, the Director of the Division of Criminal Justice, broad powers with respect to its enforcement. Such powers may be delegated to a County Prosecutor or his assistants only upon the express written authorization of the Attorney General or his designee. Additionally, the Criminal Justice Act of 1970 requires the Attorney General and County Prosecutors to jointly endeavor to maintain the effective and uniform enforcement of the laws of this

State. In order to promote such uniformity, and in keeping with the purpose of these guidelines, the County Prosecutors and their assistants shall obtain the express written approval of the Director or the Division of Criminal Justice prior to the enforcement of any of the provisions of the Racketeering Act.

2. A request for Racketeering Act enforcement authorization must be made in writing to the Director. Such a request must be made prior to any grand jury determination.

3. The Director's authorization or denial shall be in writing.

4. The request for the Director's written authorization will provide sufficient information, in writing, to enable the Director to make an informed and reasoned determination.

   Such a writing shall include the types of information which would be found in a thoughtful prosecution memorandum. That is, identification of the parties involved, factual summary and proofs, proposed charges, "RACKETEERING" purpose for the action to be brought, and likely defenses or other special conditions. In the case of a civil action a copy of the proposed complaint and investigative interrogatory shall be provided before authorization to commence the action is granted.

II. In making a determination, the Director will employ the following evaluative considerations.

1. Not every case in which the elements of a RACKETEERING violation exists will be appropriate for a RACKETEERING charge.

   a. A RACKETEERING count which merely duplicates the elements of proof of predicate crimes will not be added to an indictment unless it serves a "RACKETEERING" purpose.

2. Racketeering purposes shall include:

   a. RACKETEERING charges are necessary to adequately reflect the nature and scope of the criminal conduct (such as where the enterprise involves a division of labor and functional representations which cannot be adequately pled and proved under traditional conspiracy law).

   b. RACKETEERING charges are necessary to provide the basis of an appropriate sentence under all the circumstances (penalty enhancement).

   c. RACKETEERING charges are necessary for a successful prosecution of any of the defendants (such as a case which does not result in criminal liability for a particular defendant without reference to a RACKETEERING theory of the crime).

   d. RACKETEERING charges are necessary to provide a reasonable expectation of forfeiture proportionate to the underlying criminal conduct.

   e. RACKETEERING charges are necessary in order to permit an essential portion of the evidence of

the criminal conduct in a pattern of racketeering activity or the nature of the enterprise to be admissible - particularly when such evidence would not be admissible under other evidentiary theories. (Rule 55).

3. No RACKETEERING indictment shall be brought charging a subdivision (c) violation based upon a pattern of racketeering activity growing out of a single criminal episode or transaction.

4. The pattern of racketeering activity or collection of unlawful debts shall have some relation to the purpose of the enterprise.

5. No RACKETEERING indictment shall be brought unless the enterprise is a group associated in fact which exists for the purpose of maintaining operations directed toward an economic goal and which enterprise has an existence which can be apart from the commission of the predicate acts constituting the pattern of racketeering activity.

6. A RACKETEERING count will not ordinarily be brought where the predicate acts consist solely of federal offenses.

REVIEW OF BIGLEY APPLICATIONS

James F. Mulvihill
Assistant Attorney General
Operations Bureau
Division of Criminal Justice

The County Prosecutor must obtain all funding for staff, equipment, supplies, and all other expenses incurred by his Office from the county governing body. This is accomplished through annual requests for funding during the fall of each year which results in a calendar year appropriation for "Salaries" and "Other Expenses." Each County Prosecutor endeavors to establish and maintain a good working relationship with his county governing body concerning the providing of adequate annual appropriations for his Office. However, if the County Prosecutor is not provided with sufficient resources to carry out his duties and responsibilities, pursuant to the provisions of N.J.S.A. 2A:158-7, he may file a Bigley Application with the Assignment Judge, who is permitted to order that additional funds be appropriated to the Prosecutor's Office.

The right of a County Prosecutor to file a Bigley Application is crucial to the maintenance of the historical independence and effectiveness of his responsibility to fulfill the constitutional and statutory obligations for the detection, arrest, indictment and conviction of offenders against the laws of this State. Since 1877, the Legislature, in recognizing the necessity for such independence, has provided for the unique procedure whereby the

Assignment Judge, acting as a legislative agent, may scrutinize the County Prosecutor's budget and determine whether sufficient funds are being made available to provide for effective enforcement of the criminal law.

Since 1979, by directive of the Attorney General of New Jersey, no Bigley Applicatiion may be filed by a County Prosecutor prior to it being reviewed by the Director of the Division of Criminal Justice and approved by the Attorney General. The review by the Director of the Division of Criminal Justice is based upon a report prepared by the Operations Bureau with the assistance of the Prosecutors Supervisory Section and the Administration and Research and Evaluation Sections which is usually preceded by an attempt to resolve the budgetary impasse between the County Prosecutor and the county governing body through negotiations looking towards settlement. The review of proposed Bigley Applications by the Attorney General serves as an effective method of screening out non-meritorious Applications.

TRAINING PROGRAMS

Alvin J. Beveridge
Chief, Police Service Section
Division of Criminal Justice

The Division of Criminal Justice's primary training facility is the Conference Center at the Richard J. Hughes Justice Complex in Trenton.

The Division provides training support to all elements of the state's law enforcement community. The following training programs have been developed in conjunction with the county prosecutors for their legal, investigative and support staffs--basic training courses for assistant prosecutors, county detectives/investigators and arson investigators. In addition, a number of specialized in-service training programs are presented as necessitated by court decisions, the enactment of new legislation, and Attorney General directives; for example, drug testing, domestic violence and the Statewide Action Plan for Narcotics Enforcement.

The following programs are presented annually or as necessitated by the training requirements for prosecutors' personnel. (Information on these courses can be obtained from the Division's Police Bureau).

1. Basic Course for Investigators

A seven week basic training program which contains firearms training as well as general topics and investigative procedures essential to successful investigation, apprehension and

prosecution of criminals. Particular emphasis is placed on legal considerations pertinent to specific offenses prosecutors are called upon to investigate.

The course is mandatory for county detectives and investigators appointed pursuant to the provisions of the Police Training Act.

2. Basic Arson Investigation Course

This program offers instruction in the behavior of fire, the cause and origin of fire, interviewing and interrogation techniques, profile of an arsonist, the New Jersey Code of Criminal Justice, and profit motives. Classroom instruction is followed by an actual investigation of an incendiary structure fire.

This course is mandatory for fire personnel assigned to arson investigation units pursuant to N.J.S.A. 40A:14-7.1.

3. In-Service Arson Investigation Training Seminar

This seminar is a continuation of the training received in the basic course, specializing in difficult areas of arson investigation and prosecution, investigative and legal developments. The seminar is offered to those investigators who have completed the Division's Basic Arson Investigation Course and other investigators from the state's police and fire agencies.

This course is mandatory for fire personnel assigned to arson investigation units pursuant to N.J.S.A. 40A:14-7.1.

4. Basic Assistant Prosecutors Course

The Prosecutors Supervisory Section in cooperation with the various county prosecutors presents a basic, practical course for

new deputy attorneys general and assistant prosecutors. Course instruction emphasizes trial skills, philosophy and tactics. Among the areas covered are evidence, search and seizure, grand jury presentation, case preparation, pretrial interviews, pretrial motions, jury selection, opening statements, presentation of evidence, direct examination, cross examination, appellate issues, prosecutorial misconduct and aspects unique to the family court. On the final day of instruction, a practical exercise is conducted with the participants serving as witnesses in mock situations.

This five day course, given during the autumn of each year, is held at the Hughes Justice Complex. For additional information, contact the Prosecutors Supervisory Section.

The Division presents a number of in-service training programs that are made available to the staff of county prosecutors' offices and other law enforcement agencies. Following is a brief summary of programs presented in the last year.

1. Financial Crimes Seminar

This program is designed to provide participants with information on the combined tools of auditing and investigation and their use in obtaining higher conviction rates and greater discovery of white collar crime, political corruption and racketeering.

2. Drug and Alcohol Abuse In the Law Enforcement Workplace

This course was designed to educate police supervisors and managers in identifying drug and alcohol abuse symptoms.

3. Victim-Witness Advocacy provides orientation training for individuals who are assigned to the position of county victim-witness coordinator. Additionally, an annual in-service training program is offered for all victim-witness personnel.

4. Bias Incident Report and Investigation Training

This course was developed and presented to familiarize law enforcement officers with procedures for responding to reported incidents of bias crimes.

5. Crime Analysis Training

Several crime analysis training seminars were presented for police executives and police officers to provide information on developing and managing crime analysis programs.

6. Narcotics Task Force Training

The following training programs were presented to narcotics task force members and other law enforcement officers throughout the state:

"Analysis for Managers and Prosecutors"

"Search and Seizure for Patrol"

"Investigative Analysis"

"Supervision/Management of Narcotics Units"

"Strategic Analysis in Law Enforcement"

"Drug Identification for Patrol"

THE POLICE TRAINING COMMISSION

Chief, Police Standards Leo A. Culloo
Division of Criminal Justice

Within the Division of Criminal Justice is the Police Training Commission (PTC). The Director of the Division, as the designee of the Attorney General, serves as the chairman of the Commission. The Commission has statutory authority to promulgate statewide training curricula, approve police training schools, and establish certification standards for police trainees and instructors.

Detectives and Investigators in the Office of the County Prosecutor must attend and successfully complete the Commission's Basic Course for Investigators in order to secure a permanent appointment. If a detective or investigator is unable to complete the required training within the statutory period (See N.J.S.A. 52:17B-69), the Prosecutor may seek an extension of training time by sending a written communication to the Commission requesting the extension and setting forth the reasons for the delay.

The Police Training Act empowers the Commission to exempt from training an individual who has successfully completed a training course that is substantially equivalent to the Commission's basic course. If a Prosecutor wishes the Commission to consider a request to waive training for a Prosecutor's Detective or Investigator, the Prosecutor must submit a request to

waive training on a form prescribed by the Commission and send it to the PTC immediately following the individual's appointment.

The PTC has promulgated two rules which apply to prosecutors' detectives and investigators who are to be enrolled in a basic course full-time or who are required to fulfill waiver requirements. The rules (N.J.A.C. 13:1-81 et. seq.) require the Prosecutor to fingerprint and investigate the individual prior to admittance into training, have the individual undergo a medical examination, and to notify the school director that the rule has been complied with.

POLICE BUREAU

Administrative Analyst Judy Wheat
Division of Criminal Justice

The Police Bureau was created within the Division of Criminal Justice in response to a growing demand for improved delivery of services to the local police community. The creation of such a bureau represents an ongoing commitment to provide a broad range of services to both local police and other law enforcement agencies statewide. In providing these services, assistance and guidance, the bureau's goal is to achieve effective administration of law enforcement and criminal justice and quality police services. Overall, the bureau coordinates all Division activities that relate to police functions and assists law enforcement agencies statewide improve their operations, procedures and delivery of services by:

(1) Developing and promoting compliance with standards and operational guidelines to implement legislation, directives, and other applicable policies.

(2) Developing and conducting in-service and pre-service training programs for the state's law enforcement/ criminal justice community.

(3) Providing legal information, advice and services devoted to issues involving the police function on a statewide basis.

(4) Developing a current body of knowledge through research and analysis regarding law enforcement and criminal justice issues and concerns.

(5) Providing technical assistance and management services and conducting detailed management studies of individual police departments.

(6) Conducting demonstration and pilot projects in the field of law enforcement.

The Police Bureau staff includes law enforcement and criminal justice professionals with extensive experience in municipal and county law enforcement agencies. The staff is knowledgeable in general and legal issues of police administration and police management. Staff members are also well qualified to address more specific areas of police operations such as computerization, budgeting, crime prevention, training, records and evidence procedures, department organization, and policy development.

The Police Bureau provides general information and technical assistance to requesting police departments, responds to requests for detailed management assistance and conducts management studies of individual police departments. Utilizing a Management and Technical Assistance Request Form, a plan is developed which identifies areas in which management and technical assistance needs exist, the strategic activities which will be undertaken to address those needs, and the products anticipated as a consequence of Police Bureau efforts. This procedure ensures a planned process approach to problem analysis and assistance provided, facilitating an effective response suited to specific needs of individual police departments.

Working with county prosecutors, the bureau provides legal information, advice and services to the law enforcement community on issues and matters of statewide significance regarding the police function. Comments are prepared on pending bills, proposed legislation is drafted, and legal opinions and guidelines are provided on a variety of law enforcement matters. In addition, the bureau participates in selected litigation involving issues of

concern to the state's law enforcement community.

The bureau also provides staff assistance to develop and promote compliance with standards established by the legislature, the Police Training Commission, the Attorney General, and other policy setting and governing bodies. Guidelines, policies and standards are developed in various areas of police training and related activities, as well as other areas of police operations. Specific examples include standards for police training school operations, firearms range standards, police management guidelines, domestic violence standards, and bias incident report standards and guidelines.

Pre-service and in-service training programs are designed to prepare and equip trainees for their respective roles in law enforcement or criminal justice. Basic, in-service, specialized and advanced training programs are offered for assistant prosecutors and deputy attorneys general, state investigators, county prosecutors' investigators and detectives, arson investigators, and municipal police.

Research and analytic activities which benefit the statewide law enforcement and criminal justice communities, involve current and emergent issues and concerns, evaluations of specific programs and activities, litigation and legal issues having statewide impact or concern, and managerial and operational concerns. Such activities provide documentation of present practices and procedures as well as the effectiveness or impact of existing programs and activities, existing statutes and proposed legislation, court rules and procedures.

RELATIONS WITH LOCAL POLICE

Prosecutor John H. Stamler
Union County Prosecutor's Office

1. THE RELATION OF THE COUNTY PROSECUTOR TO THE LOCAL POLICE

   a. The Prosecutor is the chief law enforcement officer in the County and is charged with the duty of faithfully executing the law. His position demands complete co-operation by all local law enforcement agencies within his jurisdiction. He must strive to establish respect for his office and compliance with his policies, directives and guidelines.

   b. It is essential for effective law enforcement that the County Prosecutor establish a strong relationship between his office and all local law enforcement agencies. To that end, he should establish an association consisting of the County Prosecutor or his representative and each local chief of police. The association should be charged with the responsibility of facilitating cooperation and assisting and discussing matters of mutual concern.

2. ASSURING PROFESSIONALISM BY LOCAL POLICE OFFICERS

   a. The County Prosecutor must insure that the local police thoroughly and consistently attempt to detect, investigate, apprehend and charge offenders of the law so that a proper disposition will result.

   b. Within the limitations of his office, the County Prosecutor should assist and supplement local law enforcement agencies when necessary with personnel and investigative expertise.

   c. The County Prosecutor should inform all local law enforcement agencies of his policies regarding determination of charges, downgrading of offenses, administrative dismissals, pretrial intervention criteria, plea negotiation and other case dispositions.

   d. The County Prosecutor should inform each local law enforcement unit of the disposition of all cases involving that agency.

   e. The County Proscutor should periodically review and issue forms for local law enforcement agencies regarding

police reports, search warrants, statements and other pretrial criminal procedures.

3. POLICE LEGAL TRAINING

   a. The County Prosecutor should encourage, cooperate and assist in police training. He should urge annual participation in appropriate police training.

   b. The County Prosecutor should encourage, cooperate and assist in regional and state training of all local law enforcement officers.

   c. The County Prosecutor should periodically forward written information and guidelines to each local law enforcement agency concerning recent court decisions, procedural and substantive changes in the law and policies and directives issued by his office. This could be accomplished by regularly issued newsletters.

4. POLICE LIAISON OFFICER

   a. The County Prosecutor should designate an assistant prosecutor to act as a police liaison officer with each local law enforcement agency. The police liaison officer shall provide legal advice upon request and insure communication between the County Prosecutor and all local law enforcement agencies.

   b. All affidavits prepared by local police officers in support of applications for search warrants and electronic surveillances shall be reviewed by the County Prosecutor or the police liaison officer prior to their submission to the judiciary for consideration.

Americans have historically been ambivalent in their attitudes toward the law enforcement community. Citizens rightfully expect immediate and forceful police response when victimized by criminal conduct. However, the police, by virtue of their authority, often engender fear in those whom they are obliged to protect. Individuals place their ultimate reliance on the police for protection against the deepest injuries that human conduct can inflict. By the same token, police agencies govern the strongest force society permits to bear upon the individual.

The promise of law enforcement as an instrument of public safety is matched only by its power to destroy.

We all recognize that government's primary mission is to protect against criminal attack. That obligation is the very reason for government, as the preamble to the federal Constitution plainly says. In this context, it would be well to observe that the police officer is the shield of the community against the use of violence and other lawless acts. He is the principal and the most visible representative of government in combatting criminal conduct.

It is against this backdrop that these standards have been developed. Surely, one of the most important obligations of the Prosecutor is to assist the police in performing their important public duties. The day has long gone by when the Prosecutor could justifiably merely try cases. In a very real sense, he is the commander of all law enforcement resources in his county. As such, it is incumbent upon him to insure proper allocation of enforcement resources toward the end that the public will be effectively protected against criminal attack.

New Jersey historically has recognized the unique authority the County Prosecutor possesses. Our Supreme Court succinctly summarized his powers in State v. Winne, 12 N.J. 152, 168-169 (1953):

> It is a matter of common knowledge that the local law enforcement authorities from the chance man on his beat to the chief of police and beyond him to the director of public safety are responsive to the County Prosecutor's concept of law enforcement on pain of possible indictment if they do not cooperate with him in enforcing the law. He does not

> stand alone. He is in a position to command the cooperation of all the law enforcing authorities in the county.

Since the fight against crime requires unified organization with effective leadership, it is mandatory that the County Prosecutor have the loyalty, respect and cooperation of all supporting local law enforcement agencies.[1]

It is important, if the Prosecutor is to expect the cooperation of the chiefs in traditionally non-police projects (such as speedy trial, victim/witness, domestic violence), for the Chief to feel confident in calling upon the Prosecutor for assistance with a problem peculiar to the Chief's municipality. Confidence and trust - from Chief to Prosecutor, from Prosecutor to Chief - comes about because each respects the professionalism and responsibilities of the other.

Most of what the Prosecutor does (through the eyes of the local police) is important and newsworthy: We indict, we convict, we investigate, we raid. Some Prosecutors, unfortunately, regard most of what the police do as unimportant, at least as far as it relates to the Prosecutor's work. The Prosecutor must remember every day that local police perform a wide variety of jobs that have no impact upon the Prosecutor's Office but do play a very important part in maintaining public order and protecting the

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[1] ABA Standards, "The Prosecution Function," §1.1(a); Governor's Advisory Committee on Juvenile and Adult Criminal Justice Standards and Goals, §5.1, 5.4; N.J.S.A. 2A:158-1, 4 and 5; State v. Josephs, 79 N.J.Super. 411, 415 (App. Div. 1963); State v. Eisenstein, 16 N.J. Super. 8, 12-13 (App. Div. 1951), aff'd. o.b. 9 N.J. 347 (1952).

public health, such as school crossing, traffic, assisting housewives locked out of their homes, handing domestic disputes, helping school administrators deal with problem kids. Don't ever demean those responsibilities even when your office's time-goals may be subverted when a case can't be timely presented to the grand jury because a police report didn't arrive as promised.

Standard 1(a) sets forth the guiding principle pertaining to the relations between the Prosecutor and the local police. As chief law enforcement officer in his jurisdiction, the Prosecutor must insure proper utilization of resources. Standard 1(b) recognizes that the County Prosecutor's legal authority must be accompanied by a cooperative working relationship with all local police officers and agencies within the county. Obviously, the criminal justice system cannot operate successfully unless all persons, from the patrolman to the Prosecutor, function in harmony. A county association of all local Chiefs of Police and the Prosecutor should facilitate implementation of this mutual objective. The exchange of ideas by these law enforcement leaders should aid in resolving common problems. Since crime is not limited to municipal boundaries, the experiences of some may assist others in anticipating, preventing and detecting violations of the law.[2]

Frequently, it is assumed that a County Prosecutor's obligations are limited solely to prosecuting violations of the criminal

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[2]These principles have been recognized by numerous law enforcement authorities. See Resources: Task Force Report: The Police (1967) at 17; N.D.A.A., National Prosecution Standards, §20.1(a) and Commentary; LaFave, Arrest: The Decision to Take a Suspect into Custody (1965) at 515-516.

law. However, his office requires that he review and supervise all phases of law enforcement within the county. The public's demand for professionalism, efficiency and prompt processing of cases mandates effective leadership. The Prosecutor should not conceive of his role as limited to the mere prosecution of criminal cases. It is incumbent upon him to develop effective enforcement policies. Standard 2(a) recognizes the Prosecutor's supervisory role with regard to law enforcement.[3]

As part of his obligation to fully and fairly prosecute violations of law, the County Prosecutor must assist and supplement local law enforcement agencies with personnel and investigative expertise in specified cases. Electronic surveillance and organized crime activities are but two of many potential areas which may require the County Prosecutor's assistance.[4] Standard 2(b) recognizes the obligation of the Prosecutor to assist local law enforcement agencies when possible and appropriate.

An effective means of maintaining the respect and cooperation of all local law enforcement agencies is to insure their familiarity with the County Prosecutor's policies concerning offenders and offenses. Specifically, local police agencies must be timely informed of the Prosecutor's policies and actions pertaining to the determination of charges, downgrading of offenses, administrative dismissals, pretrial intervention

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[3]See ABA Standards, "The Prosecution Function," §2.7(a), 3.1(a); Governor's Advisory Committee on Juvenile and Adult Criminal Justice Standards and Goals, §5.1, 5.4; Municipal Police Administration (1971) at 125-126.

[4]Governor's Advisory Committee on Juvenile and Adult Criminal Justice Standards and Goals, §5.3, ABA Standards, "The Prosecution Function," §3.1(a).

criteria, plea negotiations and other disposition. These policies provide a framework within which local police officers may intelligently perform their duties,[5] and fosters confidence in the Prosecutor's decisions.

Similarly, local police officers must be routinely informed concerning the disposition of cases forwarded to the County Prosecutor's Office. Standard 2(d) recognizes the value of case "feedback" which insures that police rightfully recognize their role in a unified law enforcement effort.

Standard 2(e) states that the County Prosecutor should assist in the preparation of appropriate forms to be utilized by local police departments. Development of such forms will reflect the Prosecutor's experience with respect to the trial of criminal cases. Establishment of uniform forms will undoubtedly obviate many problems pertaining to the admissibility of evidence. This standard recognizes the important role of the Prosecutor in this regard.

It is well established that effective enforcement of the criminal law necessitates qualified police officers who have been and continue to be properly trained. The County Prosecutor possesses the unique ability to assist in an important phase of that training by utilizing qualified members of his staff as instructors. Prosecutors should encourage and assist in the education of local police officers. Instruction pertaining to New Jersey's criminal justice system, penal statutes, judicial

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[5] ABA Standards, "The Prosecution Function," §3.4(a) and (b); Standards and Goals, §§8.3, 8.9, 8.10 and 9.3; Task Force Report: The Police (1967) at 30.

decisions, proper pretrial procedures, the organization of the County Prosecutor's Office, New Jersey's rules of evidence and proper courtroom testimony and demeanor should be highlighted by the Prosecutor.

As chief law enforcement officer in the county, the Prosecutor should encourage every local police officer to participate annually in some phase of police training. This necessarily includes not only new or "trainee" police officers but also career police officers.[6]

Wholly apart from formal training, police officers must keep abreast of developments and changes in the criminal law. Indeed, it is the responsibility of the police officer to insure proper enforcement of the law. The Attorney General's Office publishes the Criminal Justice Quarterly and most of the Prosecutors publish a monthly newsletter. These publications are extremely helpful in educating the police. The Prosecutor should issue newsletters containing information concerning recent changes in the criminal law. Since many laws and court decisions take effect immediately, any delay may result in police officers unknowingly engaging in improper or even unlawful activity. Hence, it is incumbent upon the Prosecutor to insure that police officers in his or her county are knowledgeable as to the penal laws.[7]

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[6]ABA Standards, "The Prosecution Function," §2.7(b); N.D.A.A., Prosecution Standards, §§20.2(a), (b) and Commentary; Governor's Advisory Committee on Juvenile and Adult Criminal Justice Standards and Goals, §5.3, ABA Standards, "The Prosecution Function," §3.1(a).

[7]N.D.A.A., Prosecution Standards, §20.2(B), Task Force Report: The Police (1967) at 17, 24.

The vast responsibilities of a County Prosecutor often impair his ability to communicate on a daily basis with local law enforcement agencies. Therefore, it is suggested that an assistant prosecutor be designated as a police liaison officer. Such an individual would be responsible for providing sound legal advice. Designation of a police liaison officer will ensure that the County Prosecutor is consulted on important decisions. Numerous authorities have advocated such a procedure.[8]

Among his responsibilities, the police liaison officer should provide assistance by reviewing and approving all affidavits submitted by local police officers in support of applications for search warrants and electronic surveillances prior to submission to the judiciary for consideration. He should also consider the sufficiency of evidence in specific cases and review potential charges against offenders. This review process also serves as a valuable educational tool.

In larger counties, assistant prosecutors supervise or direct investigative units, and acquire a substantial degree of expertise in a particular area. Local police should be encouraged (or directed, as some prosecutors have chosen to do) to contact that assistant prosecutor whenever a question arises in that assistant prosecutor's area of responsibility or expertise.

The execution of a search warrant is the most intrusive invasion of a citizen's privacy that our government gives to a

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[8]See ABA Standards, "The Prosecution Function," §2.7(a); ABA Standards, "The Urban Police Function," §§7.12, 7.13 and 7.14; Governor's Advisory Committee on Juvenile and Adult Criminal Justice Standards and Goals, §5.9, N.D.A.A., National Prosecution Standards, §20.3, 20.4 and Commentary.

police officer. It is the better practice to require every application for a search warrant to be first reviewed by an assistant prosecutor. The Prosecutor can accomplish this by notifying the local Chiefs that prior review by an assistant prosecutor is to be the policy and practiced in that county; this, of course, depends upon an assistant prosecutor always being available when the local police officer needs him, not just during normal office hours. If the advantage to the State recited in State v. Kasabucki, 52 N.J. 110 (1968) is to mean anything,[9] the sufficiency of an affidavit is bolstered by consultation and cooperation between a well-prepared officer and a knowledgeable assistant prosecutor. With the availability of telephonic search warrants,[10] the local police officer must feel confident that he can gain the assistance of the assistant prosecutor at the appropriate time, not after the exigent circumstances have passed.

If there is one group of people or organization that can ensure the productivity, success and reputation of the Prosecutor's Office - outside of the Prosecutor's staff - it is the Municipal Police Chiefs within his county. The importance of nurturing that relationship - to the prosecutor and to the success of his term in office - cannot be understated.

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[9]When the issuing judge was a Superior Court Judge, the reviewing judge hearing the motion to suppress must pay substantial deference to the issuing judge's determination and cannot grant the motion to suppress unless there was no evidence to support the finding of probable cause - as long as the issuing judge was a judge of equal jurisdiction to the reviewing judge. Municipal Court Judges are not. Id., at 117.

[10]State v. Valencia, 93 N.J. 126 (1983).

Police Chiefs differ in age, personality, experience and energy as much as do Prosecutors, and, just like the Prosecutors, they differ as much among themselves. Unless a Chief has had a working relationship with a prosecutor before the Prosecutor assumed his office (the Prosecutor may have been an assistant prosecutor at one time, a Municipal Court Judge or Municipal Prosecutor, or even a P.B.A. attorney), Police Chiefs will approach the Prosecutor with much of the professional, not personal, mistrust that any police officer has for an attorney.

No matter how many times the role of a defense attorney is explored in police academies, most police officers still see defense counsel not as an advocate seeking to protect his client's rights but as a "mouthpiece" trying to get a guilty person "off." That reputation has been as much contributed to by the conduct of certain lawyers as it may be imagined by police officers, but it is still a very real problem the new Prosecutor must deal with, and the sitting Prosecutor must take great care to make sure it does not affect the way local police view him or his assistants.

Every Chief belongs to the New Jersey Association of Chiefs of Police, with which the County Prosecutors Association should strive to communicate and cooperate. Each county has its own Chiefs' Association, and it is through this association, and in his relationship with individual Chiefs, that the Prosecutor must foster mutual cooperation and trust.

Attending - at their invitation - the monthly meetings of the County's Chiefs gives the Prosecutor the opportunity to deal on a personal level with the persons whose support he needs, to discuss

law enforcement business and purely social matters, and to make the Chiefs see the Prosecutor as a human being, with the same office problems the Chief may have, the same concerns the Chief may have.

Every Chief knows the Prosecutor is the "chief law enforcement officer" in the county without the Prosecutor reminding him, unless, of course, it is a confrontational situation which will be discussed infra. Police Chiefs very much want to work with the Prosecutor, and to enjoy the support and confidence of the Prosecutor at the appropriate time. Indeed, the continuing generalized support the Prosecutor gets from the Chiefs is not nearly as critical as the support of and confidence in the Chief by the Prosecutor in a particular case, which fact, if handled properly by the Prosecutor, will never be forgotten by the Chief.

Notifying the Chiefs (in the form of a memo from the Prosecutor himself) as quickly as possible upon the enactment of a new law, answering the Chief's inquiry personally (even if one of your assistants got you the information), and advising the Chief personally when the Prosecutor's Office is investigating a local officer (when the Prosecutor is confident of the Chief's integrity and judgment) contribute to a professional relationship of trust.

The Prosecutor himself can do a lot to ensure cooperation by local police. Within the context of Police-Prosecutor relations, situations occasionally arise where the County Prosecutor is made aware of friction existing between a Chief of Police and the local governing body or its representative. Examples of such friction

may be perceived as interference by the governing body in the day-to-day functioning of the police department.

In an effort to delineate a line of authority with respect to the exercise of the police function within a municipality, the Legislature enacted N.J.S.A. 40A:14-118 effective August 24, 1981. The Police Chiefs' responsibility law makes it clear that the day-to-day operation of a municipal police department is the responsibility of the Chief of Police. The policy is grounded in the assumption that those most experienced with the law enforcement function on a professional level are best qualified to discharge the local police power. Those vested with political authority within a municipality, i.e., a Mayor, Manager or other administrative officer such as a Director of Public Safety, or the governing body, may not assume control over police assignments and duties.

The County Prosecutor has a responsibility to insure that each Chief of Police is schooled in the objectives which this law seeks to further. Moreover, each Chief of Police should be encouraged to solicit advice from the County Prosecutor or the designated police liaison officer concerning any existing situation which suggests uncertainty as to the application of the law to that situation.

In 1983, this law was the foundation upon which a Prosecutor secured a temporary restraining order barring an acting Mayor from directing unit assignment changes within the Municipal Police Department of the City of Linden. The acting Mayor had attempted

to obviate recent changes in assignments which had been implemented by the Chief of Police.

In 1984, a resolution of the governing body of Middle Township appointed the Mayor/Director of Public Safety as a special police officer pursuant to N.J.S. 40A:14-146. The resolution also purported to authorize said individual to carry a firearm. Following the intervention of the Prosecutor, the resolution was rescinded and the Mayor/Director of Public Safety committed to divorcing himself from the day-to-day operations of the police department.

Of course, there will still arise situations where the Prosecutor and Chief of Police/Director will conflict head-on, usually because of a clash of the strong egos that exist among law enforcement people. The Prosecutor must remember that maintaining the public's confidence in law enforcement is one of his primary responsibilities. He must also be aware that an overreaction to a conflict with the local police can have a long-term effect upon his, or his office's, relations with a local Chief or police department. If the situation cannot be resolved by a private meeting with the Chief or Director, the Prosecutor must take firm and effective (and, most important, well-thought out) action in order to maintain his position and to ensure it is his "concept of law enforcement," State v. Winne, at 168, that controls.

For example, in Mercer County, local police failed to cooperate with Prosecutor's investigators in a highly-publicized murder investigation, to the extent that the investigation was jeopardized. The Prosecutor issued a directive to the local

police that (a) The "investigation shall be under the direction and supervision" of the First Assistant Prosecutor of her designee; (b) The members of the local police department "shall respond to any orders or directives by" the First Assistant Prosecutor or her designee; (c) The local police "shall cooperate fully with the Mercer County Prosecutor's Office in the course of this investigation and shall provide any assistance and support requested" by the Prosecutor's Office; and (d) "The assumption of primary jurisdiction by the Mercer County Prosecutor's Office in this matter shall continue until further notice." The Prosecutor cautioned the local police that "in the event that there is any further lack of cooperation with, interference with or failure to respond affirmatively to the requests and order of this office by any members of the [local] police department in whatever capacity, either directly or indirectly, I will bring this entire matter before the grand jury for appropriate investigation and actions."

In Union County, the Prosecutor wrote to the Mayor and Police Director instructing them that the Prosecutor's Arson Unit would assume primary responsibility for all arson investigations in that municipality because of the local police department's lack of competence in handling arson matters, lack of cooperation with the Prosecutor's Office in previous arson investigations, and failure to have its personnel participate in arson training offered by the Prosecutor's Office to all municipal police and fire personnel in the county.

In Hudson County, in order to assure the same degree of competence in homicide investigations throughout the county, the

Prosecutor instructed the local Chiefs that his office would assume primary responsibility for homicide investigations, with assistance from local departments, at least until such time as the Prosecutor could be satisfied that all municipal homicide investigators possessed the same degree of experience and competence as his investigators had.

The Prosecutor may also have to intervene where necessary to remove a conflict between police departments or between a Chief and his governing body which does not involve N.J.S.A. 40A:14-118.

In Union County, the township committee directed a Chief to give a promotional examination on June 15, despite the fact that the Chief had polled the eligible officers and learned that 13 out of 18 wanted the exam given in early September, after vacations; that the P.B.A. President indicated the instructional materials were not available and that five weeks from notice to exam were just not enough time; and that the New Jersey State Association of Chiefs of Police had notified the local Chief that five weeks was insufficient time to assemble a proper test. The Prosecutor's threat of seeking a temporary restraining order was sufficient to get the township committee to relent in its directive to the Chief and the exam was given in September.

POLICE SOLICITATIONS

Assistant Prosecutor Harold C. Knox
Union County Prosecutor's Office

An endeavor engaged in by many police departments in order to raise funds for the department's Welfare Fund is the police solicitation. The following are some points to remember when planning such a fund raiser.

According to N.J.S.A. 2A:170-20.2, the police agency must file, not less than 10 days prior to beginning the solicitation, a notice of intention to solicit funds. This notice must be filed with the County Prosecutor and contain:

a. The name and address of the organization or association;

b. The names and addresses of the officers of the organization;

c. The names and addresses of the officers or members of the organization or association who will be in charge of the solicitation or collection;

d. A brief description of the solicitation or collection program proposed to be undertaken;

e. The purpose for which the funds or contributions to be solicited and collected will be used;

f. A statement that an audit will be made of the solicitations and collections by an independent auditor and that such audit will be available for public inspection at the office of the organization or association.

Each such notice of intention shall be duly subscribed and sworn to by at least two officers of the organization or association duly authorized therefore by resolution of the organization or association.

The statute provides that any person who fails to comply with its terms is liable as a disorderly person.

Once your notice is filed you may begin the solicitation 10 days later. N.J.S.A. 2A:170-20 controls the manner in which the solicitation may be conducted.

Only bona fide members of the organization may conduct the solicitation, be they active or retired.

It may be conducted personally or by mail only in payment for tickets, books, or tokens, but is limited to the municipality where they are or were employed as police officers. A state organization may solicit anywhere within the state; a county organization may solicit anywhere within the confines of the county.

A private organization cannot be hired to run the solicitation for a fee or any type of compensation.

Honorary membership cards, courtesy cards or cards of a similar nature may not be given in connection with the solicitation.

Once again, it is a disorderly persons offense to violate any of these provisions.

Within 30 days following the close of any such solicitation or collection program, and in no event later than six months following the date of filing of the aforesaid notice of intention, the organization or association shall file with the County Prosecutor with whom the notice of intention, the organization or association shall file with the County Prosecutor with whom the notice of intention was filed, and in the case of a state

organization or association with the Attorney General of New Jersey, a report which shall contain the following information and data:

a. The name and address of the organization or association;

b. The place where the notice of intention was filed;

c. The date on which the notice of intention was filed;

d. The method used in the solicitations or collections;

e. The amount of money collected from or as a result of such solicitations;

f. An itemized statement of the expenses incurred in connection with such solicitations and collections;

g. The name and address of the auditor who made an independent audit of the solicitations and collections, and the name and address of the place where such audit may be inspected.

h. The purpose for which the funds have been or will be used. Each such report shall have annexed thereto a copy of the audit and shall be duly subscribed and sworn to by at least two officers of the organization or association, duly authorized therefor by resolution of the organization or association, one of whom shall be the treasurer thereof.

Any person who violates any provisions of this section is a disorderly person.

Finally, N.J.S.A. 2A:170-20.3 deals with the deposit of these monies and provides that they are to be deposited in a separate trust fund to be maintained by such organization or association, in its name, in a banking institution authorized to do busines in this State, and no part of such fund shall be drawn out except by check or warrant signed by two officers of the organization or

association, duly authorized therefor by resolution of the organization or association, one of whom shall be the treasurer thereof, and only for the welfare purposes for which the monies in such fund were solicited and collected.

Any officer or member of any such organization or association who violates any provision of this section is a disorderly person.

POLICE ACADEMIES AND TRAINING CENTERS

Prosecutor Jeffrey S. Blitz
Atlantic County Prosecutor's Office

The New Jersey Police Training Commission has approved 23 Police Academies and Police Training Centers in the State of New Jersey. As a resource document, the approved police academies and training center listings are enclosed including their location, name of director, administration, funding, and Police Training Commission approved courses officered at each facility.

Further information is provided setting forth the procedures to obtain police training instructor certification generally and firearms instructor certification specifically.

The Police Training Act (N.J.S.A. 52:17B-66 et seq.) vests with the Police Training Commission, the responsibility and duty to prescribe the curriculum for the basic courses offered to county and municipal law enforcement officers who attend commission-approved schools. In addition, they prescribe the course of study that a county investigator or detective must successfully complete.

The basic course for county and municipal law enforcement officers who attend commission-approved schools ranges from a period of 14 to 16 weeks, and encompasses 13 functional areas representing 119 instructional units containing 723 performance objectives as of July 1, 1988.

The prescribed course of study for a county investigator or detective is for a period of 7 weeks. They must successfully complete 8 functional areas representing 62 instructional units containing 296 performance objectives. These performance objectives are designed to reflect those basic skills or area of knowledge that are required by a county detective or investigator in the performance of his or her duties.

The Department of Law and Public Safety, Division of Criminal Justice, Police Services Section continues to expand its influence, direction and leadership in fulfilling its responsibility and duty in police training.

NEW JERSEY POLICE TRAINING COMMISSION APPROVED ACADEMIES

ACADEMY	ADMINISTRATION	FUNDING	PTC-APPROVED COURSES
Atlantic County Police Academy Captain Michael Erskine (Director) 101 Shore Road Northfield, New Jersey 08225 609-484-8686	Police Department	City of Atlantic City	A, G, J, M, N
Atlantic County Police Training Center Deborah M. Deibler, Sergeant (Director) 101 Shore Road Northfield, New Jersey 08225 609-484-7543	Cty. Chiefs of Police	Cty. Brd. of Freeholders	E, F, G, H, I, J, M, N
Bergen County Police & Fire Academy Ronald Calissi, Esq. (Director) 281 Campgaw Road Mahwah, New Jersey 07430 201-327-5200, 646-2733, 646-2674	County Freeholders	Cty. Brd. of Freeholders	A, E, F, G, H, I, J, K, M, N
Burlington Cty. Assn. of Chiefs of Police Academy Henry Van Brunt (Director) County Office Building 49 Rancocas Road Mt. Holly, New Jersey 08060 609-261-3900	County Freeholders	Cty. Brd. of Freeholders	A, E, F, G, H, I, J, M, N
Camden County Police Academy Captain John J. Grady Camden County College -- Adams Hall Box 200 Blackwood, New Jersey 08012 609-227-7200	County Prosecutor	Cty. Brd. of Freeholders	A, E, F, G, H, I,

ACADEMY	ADMINISTRATION	FUNDING	PTC-APPROVED COURSES
Cape May County Police Academy Eugene Halton (Director) Crest Haven Complex Cape May Court House, New Jersey 08210 609-465-1133, 1134	County Freeholders	Cty. Board of Freeholders	A, E, F, G. H, I, J, K, M, N
Division of Criminal Justice-Training Academy Alvin Beveridge (Director) Division of Criminal Justice 25 Market Street CN 085 Trenton, New Jersey 08625 609-984-4494	Division of Criminal Justice	State of New Jersey	A, B, E, F, G, H, I, J, K, L, M, N
Gloucester County Police Academy Frederick W. Reeve (Director) Gloucester County College Tanyard Road Sewell, New Jersey 08080 609-468-5000 ext. 379	County College	Cty. Brd. of Freeholders	E, F
Jersey City Police Academy Captain Brian Anglin (Director) 282 Central Avenue Jersey City, New Jersey 07307 201-547-5355	Police Department	City of Jersey City	A, E, F, G, H, I, M, N
Middlesex County Police Academy Matthew G. Zaleski, Jr. (Director) P.O. Box 1391, Nixon Station Edison, New Jersey 08817 201-225-0750	County Prosecutor	Cty. Brd. of Freeholders	A, E, F, G, H, I, J, M, N

ACADEMY	ADMINISTRATION	FUNDING	PTC-APPROVED COURSES
Monmouth County Police Academy Robert D. Scott, Sr. (Director) Kozloski Road Freehold, New Jersey 07728 201-577-8710	County Freeholders	Cty. Brd. of Freeholders	A, C, E, F, G, H, I, J, M, N
Morris County Fire Fighters & Police Training School Edward Mullen (Director) Courthouse, Morris County Morristown, New Jersey 07960 201-829-8655, 829-8656, 829-8657	Cty. Chiefs of Police	Cty. Brd. of Freeholders	A, E, F, G, H, I, J, K, M, N
Newark Police Academy Captain Michael J. Pocchio (Director) 1 Lincoln Avenue Newark, New Jersey 07104 201-733-6030	Police Department	City of Newark	A, E, F, G, H, I, J, M, N
New Jersey Department of Corrections Correction Officer Training Academy Chief Tom Cooper (Director) Stuyvesant Avenue & Whittlesey Road CN 863 Trenton, New Jersey 08625 609-292-3769	Department of Corrections	State	G, J, K
Ocean County Police Academy James Tracey (Director) 659 Ocean Avenue Lakewood, New Jersey 08701 201-363-8715, 363-8710	County Freeholders	Cty. Brd. of Freeholders	A, C, E, F, G, H, I, J, L, M, N

ACADEMY	ADMINISTRATION	FUNDING	PTC-APPROVED COURSES
Passaic County Chiefs of Police Academy Sandy R. Galacio (Director) 209 Totowa Road Wayne, New Jersey 07470 201-628-7686,-7691	County Freeholders	Cty. Brd. of Freeholders	E, F, G, H, I, J, M, N
Paterson Police Academy Vincent Amoresano (Director) 111 Broadway Paterson, New Jersey 07505 201-881-6850	Police Department	City of Paterson	A, G, H, I, M, N
Salem Public Safety Training Center Albert B. Johnson (Director) Salem County Vo-Tech Schools 350 Woodstown-Salem Road Woodstown, New Jersey 08098 609-769-0101	Salem County Brd. of Vocational Education	Salem County Brd. of Vocational Education	E, F, G, H, I, J, M, N
Somerset County Police Academy Captain Wayne J. Pilato (Director) 614 First Avenue Raritan, New Jersey 08869 201-685-0442	Cty. Prosecutor	Cty. Brd. of Freeholders	A, E, F, G, H I, J, M, N
State Police Training Center Captain Carl A. Williams (Director) Sea Girt, New Jersey 08750 201-449-5200 Ext. 214	State Police	State of New Jersey	A, G, H, I, J, K, M, N

ACADEMY	ADMINISTRATION	FUNDING	PTC-APPROVED COURSES
Sussex County Police Academy Chief Eskil S. Danielson (Director) Byram Township Police Department Mansfield Drive R.D. #2 Stanhope, New Jersey 07874 201-347-4008	Cty. Chiefs of Police and Cty. Brd. of Freeholders	Cty. Brd. of Freeholders	E, F, G, H, I, M, N
Trenton Police Academy Captain John T. Nelson (Director) Police Headquarters 225 N. Clinton Avenue Trenton, New Jersey 08608 609-989-3915	Police Department	City of Trenton	A, E, F, G, H, I, J, M, N
Union County Police Academy Theodore E. Polhamus (Director) 1776 Raritan Road West Hall, Room 308 Scotch Plains, New Jersey 07076 201-889-4850,-4851	County Prosecutor	Cty. Brd. of Freeholders	A, E, F, G, H, I, J, K, M, N

COURSE LISTING INDEX

INSTRUCTOR CERTIFICATION

1. The school director arranges an interview with each individual who seeks instructor certification. If the candidate is a police officer, he or she submits a Commission-Prescribed Application form signed by the Chief of Police of the employing agency. The Director should make no commitment to the individual until the signed application, indicating the approval of the Chief, has been submitted. Form PTC-4 (Rev. 2.84) attached.

   Applicants who are not members of a law enforcement agency submit the application form appropriate for their status.

2. If the Director plans to use the applicant as an instructor, the school director endorses the application form and sends it to the commission.

3. The school director has the responsibility for ensuring that all his instructors have commission certification. Sometimes an emergency or unusual circumstance make it necessary to use an uncertified instructor; in such cases, the school director contacts the commission promptly to provide an explanation of the circumstances.

4. The school director may request the temporary certification of an instructor by telephoning the School Operations Section supervisor, who will need to have the following information:

   - o name and agency of the instructor
   - o subject to be taught
   - o days and hours of presentation

5. The final schedule submitted by the school director at the end of the course will include the names and employing agencies of all instructors who actually taught any portion of the course.

ne	First Name	Middle	Experience (Yrs.)	Certificat

Agency/Employer	Rank/Title	Circle One POLICE NON-PO
Agency/Employer Address	Zip Code	Teaching Specialty

College Attended	Major	Circle Highest Grade Completed HS: 9 10 11 12 (GED) College 1 2 3 4 5 6 7	Degre

Teaching Experience (Subject)	School	Date

Methods of Instruction Courses (copy of Certificate required)	School or Agency	Date

Courses Related to Teaching Specialty	

NEW JERSEY POLICE TRAINING COMMISSION
INSTRUCTOR APPLICATION

PTC4

Last Name	First Name	Middle

Major Assignments	Dates

Additional Qualifications	FOR COMMISSION
	Date Issued / Cert
	Waiver Date / Form
	Active / Inact

For Firearms Instructor Applicants Only:

I certify that this applicant has met the additional requirements for firearms instructors as stipulated in the Police Training Commission rules.

T.R.C. Score: _____

_____

Signature of School Director Date

SIGNATURE OF APPLICANT

SIGNATURE OF AGENCY ADMINISTRATOR

SIGNATURE OF SCHOOL DIRECTOR

SCHOOL

PTC-4

13:1-3.1 NEED FOR CERTIFICATION

All instructors participating in the basic course at a commission school must be certified.

13:1-3.2 ELIGIBILITY FOR CERTIFICATION

Any individual who has completed two (2) years of college, has a minimum of three (3) years of experience in his or her occupation or profession and who can demonstrate knowledge or skill in a subject contained in the basic course curriculum offered at a commission school is eligible for consideration for police instructor certification. The commission may waive the educational and/or work experience requirement for compelling reason(s).

13:1-3.4 TYPES OF CERTIFICATION

Individuals approved by the commission for certification shall be entitled to a regular instructor's certificate if they are police officers and must complete a commission-recognized instructor training course. All others shall be entitled to a special instructor's certificate.

13:1-3.6 ADDITIONAL CERTIFICATION REQUIREMENTS FOR FIREARMS INSTRUCTOR

In addition to the requirements set forth in 13:1-3.1, 13:1-3.2, and 13:1-3.4 above, an individual seeking certification to instruct in the subject of firearms must possess additional

qualifications. The individual must successfully complete a commission-recognized firearms instructor course. Under the immediate supervision of a school's range master, the individual must successfully demonstrate that he or she can: (a) identify the principal parts of the weapons used in the training program, (b) demonstrate familiarity with the proper and safe handling of weapons, (c) demonstrate familiarity with the established range safety rules, and (d) be able to fire safely and score no less than 95 as in a minimum of one firing of the commission-required Handgun Qualification Course. In order to receive recertification, police instructors used for firearms training must successfully demonstrate items (a), (b), (c), and (d) annually under the immediate supervision of a range master.

RELATIONS WITH COUNTY GOVERNMENT

Former Prosecutor Harold J. Ruvoldt, Jr.
Hudson County Prosecutor's Office

A. BUDGET PREPARATION AND ADMINISTRATION

The development of the yearly budget and the method of expense control will undoubtedly vary from County to County. It will depend upon both the local government procedures and the management structure of each Prosecutor's Office. In some offices collective bargaining procedures may have to be accommodated to the process. Therefore, it is clear that there can be no uniform monogram drafted, which will be applicable to all offices. Instead, outlined herein is the process used in Hudson County from which appropriate modifications can be made to adjust for local differences.

The budget is divided into two parts. The first is salaries and wages; the second is other expenses.

The salaries and wages budget is determined by the Prosecutor. Based on the prior years appropriation and keeping in mind the statewide average the Prosecutor decides on an across the board percentage increase and attempts to negotiate same with the proper County officials.

The preparation of the other expenses budget starts with the first line supervisors. Each supervisor is requested to determine the need of their respective units for the coming year. They must put their request in writing with support documentation. The

requests of everyone in the office is forwarded through the Office Manager to the Prosecutor. A determination is made by the Prosecutor and his senior staff on what new equipment is required. The other expenses budget is divided into numerous cost codes. Based on the prior years actual expenditures and the anticipation of the coming year, it is possible to appropriately determine dollar amounts for set expenses in specific categories such as dues and subscriptions and rentals.

The other expenses budget is then compiled by the Office Manager in a first draft stage. Another meeting is called by the Prosecutor and his senior staff and the budget is read through for the final time to give everyone the opportunity to make additions and/or deletions. The budget is then finalized and forwarded to the County Comptroller and other interested County officials.

A date is then set for a preliminary hearing with the Prosecutor to present his budget request and afford him the chance to explain and justify each line item.

The administration of the budget is done through the use of an in-house computer as well as a manual system. Each time a requisition is forwarded to the County for processing, the dollar amount is put into the computer and automatically deducted from the appropriation for that cost code. This enables us to determine what we have expended to date and our program is designed to project out an anticipation of what we will expend by the end of the year.

The manual system is a general ledger which is utilized when the goods have been received or the services have been performed.

The information (the purchase order number, the date of the order, the vendor name and the actual dollar amount) is posted. In the end, the manual system, which lists the final amount paid, can be used as a cross check with the automatic system where in some instances the figures are anticipated.

This office maintains a confidential checking account. Each time a check is written the amount of the check is entered into the computer and deducted from the appropriate cost code. At the same time, a case disbursements journal is manually maintained and at the end of each month the account is reconciled with the bank statement.

B. BIGLEY APPLICATIONS

Prosecutors are in a unique position in reference to the county budget process. Alone of all officials in the County Budgets, the Prosecutor has an external remedy against a restrictive budget appropriation. By virtue of N.J.S. 2A:158-7, the Assignment Judge is empowered to allow the Prosecutor all the necessary expenditures to conduct his office. This statute has become known as the Bigley statute after the New Jersey Supreme Court decision interpreting it. In re Bigley, 55 N.J. 53 (1969). There, the Court held that the Assignment Judge could order additional expenditures for the Prosecutor over his budget if necessary for the reasonable prosecution of the criminal business of the County. In establishing this statute, the Legislature recognized the need to give the Prosecutor the tools to carry out the awesome responsibilities of his office. See, State v. Winne, 12 N.J. 152 (1953) for the classic statement of a Prosecutor's

responsibility and authority.

The Assignment Judge in ruling on an application by the Prosecutor under N.J.S. 2A:158-7 acts as a legislative and not as a judicial officer. He makes his own original evaluation of the Prosecutor's request and does not pass on whether the action of the Board of Freeholders was reasonable or not. The statute gives the Assignment Judge final and conclusive authority to approve expenditures for the operation of the Prosecutor's Office beyond the appropriations of the Board of Freeholders. In re Bigley, supra at pg. 59. In making this determination the Assignment Judge is not to consider the CAP law. Thus the judge authorized the reasonable expenditures by the Prosecutor leaving it to the Board to work out the rest of the budget. In re Ruvoldt Application, 187 N.J. Super. 81, 90 (App. Div. 1982).

In seeking authorization for increased expenditure, the Prosecutor does not have the burden of demonstrating that the appropriations by the Board of Freeholders are so inadequate that his office is not capable of functioning. This type approach was rejected in an analogous setting involving the Assignment Judge's powers under R. 1:33 to appoint and fix salaries of his Assistants. In that situation the Court held the standard to be what was reasonably necessary for the efficient administration of justice. Interpreting the Bigley statute, the Appellate Division used similar language by stating that the Assignment Judge determines how much money the Prosecutor ought to have in order to function effectively. In re Ruvoldt Application, supra at pg. 88.

This delegation of legislative responsibility has been held constitutional because the judiciary is directly concerned with the efficient dispositions of criminal and quasi-criminal matters. Conversely it would be an improper delegation of legislative power to the judiciary if it were directed to consider both the necessity of the Prosecutor's application and the constraints of the CAP law. In re Ruvoldt Application, supra at pg. 90.

The Bigley statute has had a similar counterpart for over a century. Lindabury v. Ocean County Freeholder Board, 47 N.J.L. 417 (S.Ct. 1885). Access to this statute also allows a Prosecutor the ability to set appropriate salaries even within appropriations where concurrence with the County officials under N.J.S. 2A:158-16 and 2A:157-18 cannot reasonably be obtained. In re Ruvoldt Application, supra. This reservoir of relief has enabled the County Prosecutor to avoid being subservient to the political vicissitudes of his locale. The Prosecutor rather than the Board of Freeholders is the public employer of Prosecutor employees for the purposes of collective bargaining. Bergen County Freeholder Board v. Bergen County Prosecutor, 172 N.J. Super. 363 (App. Div. 1980); In re Mercer Freeholder Board and Mercer County Prosecutor, 172 N.J. Super. 41 (App. Div. 1980). A Prosecutor who negotiates salaries with his employees can if necessary seek the funds required to carry out that agreement through a Bigley application, provided he can show that it is reasonably necessary for the efficient operation of his office. Sullivan v. Burlington County Freeholder Board, 179 N.J. Super. 228 (App. Div. 1981).

The Bigley application may also be needed to handle unanticipated expenses of an extraordinary investigation or prosecution in the event that County officials are not willing to authorize these necessary added expenses. It can be noted that one of the earliest cases concerning the use of the predecessor statute was for the prosecution of a specific case. Lindabury v. Board of Chosen Freeholders of Ocean County, 47 N.J.L. 417 (S.Ct. 1885).

Bigley litigation is not a substitute for the ordinary budget process. The case suggests that approach should be made in the first instance to the County officials even though a Bigley Court does not review their action. Assuming, however, that approach to the County Officials fails and the pressing necessity remains, a Prosecutor should prepare his application under N.J.S. 2A:158-7. Pleadings in this matter can be in the form of a complain or verified petition setting forth facts that justify the application. The application may concern itself with salaries, equipment, numbers of Assistant Prosecutors or Investigators, numbers of other personnel, or any other necessary expenditure. A copy of the proposed application should be given to the director of Criminal Justice to gain his input and concurrence. If the impasse continues, the application is filed with the Court and either an Order to Show Cause or an Order Fixing a Date for Hearing is obtained from the Assignment Judge. Notice is served upon the County officials and on the return date the Judge should begin taking testimony. Since he sits as a legislative agent, strict rules of evidence do not apply. Testimony will vary depending upon the issues involved. Comparison to other

Prosecutor offices is often effective to show disproportionately low salaries. Every year the Division of Criminal Justice publishes a salary survey which can be a useful evidential exhibit. Sometimes the testimony will have to be directed towards a specific program. In that case it will be necessary to show why the need exists and what the necessary costs are.

The Assignment Judge's determination after the hearing is final and is enforceable as any Court order. It is reviewable on appeal. However, in order to be overturned, it must be shown that the Judge's determination was arbitrary or capricious. The decision will be upheld if there is credible evidence to support it. In re Bigley, supra at pgs. 57-59.

RELATIONS WITH STATE AND COUNTY MEDICAL EXAMINERS

First Assistant Prosecutor Paul F. Chaiet
Assistant Prosecutor Anthony J. Mellaci, Jr.
Monmouth County Prosecutor's Office

Section I: Medical Examiner

The duties and responsibilities of a medical examiner are governed by statute, principally N.J.S.A. 52:17B-78 through N.J.S.A. 52:17B-93, known as the "State Medical Examiner Act" which was effective in January of 1968. In addition, N.J.S.A. 40A:9-46 through N.J.S.A. 40A:9-62 concern the office of county medical examiner.

In April of 1972, the office of state medical examiner was created, which office is now deemed to be part of the Division of Criminal Justice. (N.J.S.A. 52:17B-79). The state medical examiner has general supervision over all county medical examiners. He is also given broad authority to promulgate rules and regulations with regard to effectuating the provisions of the State Medical Examiner Act. (N.J.S.A. 52:17B-80). These regulations are contained in the New Jersey Administrative Code 13:49-1.1 et seq.

The office of county medical examiner was created pursuant to N.J.S.A. 52:17B-83. The statute provides that the examiner shall be appointed by the Board of Chosen Freeholders for a term of five years. The statute further provides that the county medical examiner shall be a licensed physician of recognized ability and good standing in his community, with such training or experience

as may be prescribed by standards promulgated by the state medical examiner by rule or regulation. These eligibility standards are set forth in N.J.A.C. 13:49-7.1. There is a conflict between N.J.S.A. 52:17B-83 and N.J.S.A. 40A:9-46 as to whether or not the medical examiner must be a resident of the county.

The county medical examiner, subject to the approval of the Board of Chosen Freeholders, may appoint deputy or assistant county medical examiners to assist him. (N.J.S.A. 52:17B-84) N.J.A.C. 13:49-7.1 also sets forth the eligibility standards for deputy or assistant county medical examiners.

When the death occurs in one county and the incident which is suspected of being the cause of death has occurred in another New Jersey county, the medical examiner of the county where the death occurred has primary jurisdiction; however, he may transfer the jurisdiction to the medical examiner in the county where the incident suspected of being the cause of death occurred. When an incident which is suspected of being the proximate cause of death has occurred outside this state and the death occurs in a New Jersey county, the medical examiner of the said county shall investigate the death completely. (N.J.A.C. 13:49-1.3).

An amendment to the law concerning the duties of medical examiners occurred on January 13, 1986. This amendment dealt with the duties with officials with respect to unidentified or unclaimed bodies; burial; and cost of burial, under N.J.S.A. 40A:9-49. The county medical examiner upon taking charge of unidentified or unclaimed dead bodies shall make burial arrangements. If the decedent left an ascertainable estate able

to pay for the burial, the cost thereof certified by the officer in charge, shall be payable out of such estate. If the decedent left no ascertainable estate able to pay for the burial the cost of burial shall be borne:

a. If the decedent was an adult or emancipated child with surviving spouse by the surviving spouse,

b. If the decedent was an unemancipated child with a surviving parent, by the surviving parent, or

c. If there is no surviving spouse or parent, as applicable, by the county.

Section II: Postmortem Examinations

Pursuant to N.J.S.A. 52:17B-86 an investigation by the medical examiner shall be conducted in the case of all human death from the following causes:

a) Violent deaths, whether apparently homicidal, suicidal or accidental, including, but not limited to, deaths due to thermal, chemical, electrical or radiation injury and death due to criminal abortion, whether apparently self-induced or not;

b) Death not caused by readily recognizable disease, disability or infirmity;

c) Death under suspicious or unusual circumstances;

d) Death within twenty-four (24) hours after admission to a hospital or institution;

e) Death of inmates of prisons;

f) Death of inmates of institutions maintained in whole or in part at the expense of the state or county, where the inmate was not hospitalized therein for organic disease;

g) Death from causes which might constitute a threat to public health;

h) Death related to disease resulting from employment or to accident while employed;

i) Sudden or unexpected deaths of infants and children under three years of age and fetal deaths occurring without medical attendance.

Under N.J.A.C. 13:49-1.1, an autopsy is mandatory in all cases of human death occurring in the following circumstances:

a) All cases of apparent homicidal death;

b) All deaths occurring under suspicious or unusual circumstances;

c) All deaths from causes which might constitute a threat to public health;

d) All deaths of inmates of a jail, prison or penitentiary, all prisoners and suspects who are in the process of being detained, arrested, or transported by guards, police and law enforcement or court officers;

e) All infants and children suspected of having been abused or neglected and children suspected of having died from sudden infant death syndrome (SIDS);

f) In all cases wherein the state medical examiner, the attorney general and the assignment judge of the Superior Court, or the county prosecutor (of the county wherein the injury occurred or where the decedent expired) requests a postmortem examination.

Under N.J.A.C. 13:49-1.2, an autopsy may be performed when it appears in the discretion of the county medical examiner to be in the public interest to do so in all cases of human deaths occurring in the following circumstances:

a) All cases of violent death which are apparently suicidal or accidental, including, but not limited to, deaths due to thermal, chemical, electrical or radiation injury except as enumerated in the mandatory postmortem examination section of the rules;

b) All deaths caused by disease, disability or infirmity which are not readily recognizable;

c) All deaths of inmates of a jail, penitentiary, or prison, including all deaths of inmates occurring in institutions maintained in whole or in part at the expense of the state or county where the inmate was not hospitalized therein for organic disease;

d) All deaths relating to diseases resulting from employment or from accidents while employed;

e) All deaths from motor vehicle collisions to include drivers, occupants, and pedestrians.

The "State Medical Examiner Act" was amended effective February 16, 1984, to indicate that "no dissection or autopsy shall be performed, in the absence of a compelling public necessity, over the objection of a member of the deceased's immediate family or in the absence thereof, a friend (as defined in N.J.S.A. 52:17B-88.1) of the deceased that the procedure is contrary to the religious belief of the decedent or if there is an

obvious reason to believe that a dissection or autopsy is contrary to the decedent's religious beliefs." (N.J.S.A. 52:17B-88.2) "Compelling public necessity" is defined in N.J.S.A. 52:17B-88.1 to mean that:

a) The dissection or autopsy is essential to the criminal investigation of a homicide of which the decedent is a victim; or

b) That the discovery of the cause of death is necessary to meet an immediate and substantial threat to the public health and that a dissection or autopsy is essential to ascertain the cause of death; or

c) That the death was that of an inmate of a prison, jail or penitentiary; or

d) That the death was that of a child under the age of twelve years suspected of having been abused or neglected or suspected of being a threat to public health and the cause of whose death is not apparent after diligent investigation by the medical examiner; or

e) That the need for a dissection or autopsy is established pursuant to the provisions of Section IV of the Act. (N.J.S.A. 52:17B-88.4)

N.J.S.A. 52:17B-88.3, N.J.S.A. 52:17B-88.r and N.J.S.A. 52:17B-88.5 describes what court action should be taken by the medical examiner in the event he feels that a public necessity requires that an autopsy be done over the religious objection of the deceased's immediate family or friend. Although not stated in the statute, the Prosecutor's office should be advised by the

medical examiner and have input whenever a religious objection is filed in a case involving potential criminality.

Under N.J.A.C. 13:49-1.5, the standards of when, why and how autopsies are to be conducted are set forth. N.J.A.C. 13:49-2.1 and N.J.A.C. 13:49-2.2 standardize and clarify the method of collection of specimens from the autopsy and N.J.A.C. 13:39-2.3 sets forth a uniform standard for the retention of autopsy specimens for microscopic examination.

Section III: Relations Between the Prosecutor and the Medical Examiner

Under N.J.S.A. 52:17B-90, all law enforcement officers and county prosecutors are obligated to cooperate with the medical examiner. Under N.J.A.C. 13:49-5.1(h), the medical examiner is obliged to cooperate and coordinate with the county prosecutor in the conduct of a criminal investigation. It is essential that this mandated cooperation be put into practice because cooperation is truly essential in order to make a death investigation successful.

Under N.J.S.A. 52:17B-87, both the prosecutor and the county medical examiner must be notified immediately concerning any of the deaths listed in N.J.S.A. 52:17B-86. As previously indicated, a prosecutor can order a medical examiner to perform an autopsy. (N.J.S.A. 52:17B-88). According to N.J.S.A. 52:17B-87, immediately upon receipt of notice of one of the deaths listed in N.J.S.A. 52:17B-86, "the medical examiner or his deputy or his assistant shall go to the dead body and take charge of same." The Administrative Code sets forth guidelines to supplement the

statutory mandate that the medical examiner "take charge of the body." The Administrative Code indicates that the Prosecutor has primary control of the crime scene. The Administrative Code provides that the office of the county medical examiner shall be required to inspect the scene of the homicide, unusual or suspicious death, decomposed bodies, or unwitnessed and unexpected deaths when the body still lies there dead and the prosecutor can order the medical examiner to come to the scene. The medical examiner shall not order the removal of the body from the scene until the county prosecutor approves. Recovery of physical evidence from the scene of suspected criminal homicides shall be the responsibility of the prosecutor. In a criminal homicide investigation, witnesses and potential suspects shall be interviewed by law enforcement personnel and the medical examiner shall coordinate with the prosecutor to obtain the information as is required as part of the medical death investigation. (N.J.S.A. 52:13:49-5.1).

A detailed description of the findings written during the progress of an autopsy and the conclusions drawn therefrom shall be filed in the offices of the state medical examiner, the county medical examiner and with the county prosecutor. (N.J.S.A. 52:17B-88). This report must be delivered to the prosecutor within thirty (30) days of completion of the autopsy in all homicides, suspicious and unusual deaths. (N.J.A.C. 13:49-3.39(d)

Copies of the official report of an autopsy performed by the medical examiner shall not be released except to the next of kin

of the decedent, the deceased's legal representative, law enforcement agencies, attorneys or insurance companies representing parties in litigation arising from the incident that caused the decedent's death, the office of the public defender or any other person or agency having the right to report under the laws of this state. In addition, the autopsy report may be furnished to any person upon written authority of the decedent's next of kin or legal representative. (N.J.A.C. 13:49-3.1). A fee can be charged for copies of the report. (N.J.A.C. 13:49-3.2). In cases involving homicide, death by auto and suspicious death, the medical examiner should consult with the prosecutor's office prior to releasing autopsy information.

The records of the office of the state medical examiner and the county medical examiner, made by themselves or by anyone under their direction or supervision, or transcripts thereof certified by such medical examiner shall be received as competent evidence in any court in this state of the matters and facts contained therein. (N.J.S.A. 42:17B-92).

Section V: Case Law Pertaining to the Duties of Medical Examiner

As the foregoing pages indicate, the responsibilities of medical examiners are clearly set forth by statute and the Administrative Code. There are very few cases dealing with this area and those which do all precede the statutes which are now applicable. Nevertheless, there are two areas involving the duties of a medical examiner which merit attention.

The first class of cases deal with the responsibility of the medical examiner as regards the issuance of death certificates.

The case law in this area is clear: Unless the medical examiner has personal knowledge of the facts surrounding the death, he cannot verify that death was the result of a particular cause.

In Kramerman v. Simon, 131 N.J.L. 250 (1944), for example, the court noted that "it is clear that the Assistant County Medical Examiner had no knowledge of the facts to which he certified. Thus, his certificate was not made 'according to law' and, therefore, lacks the statutory efficacy claimed for it, namely, that it is 'prima facie' evidence of the facts therein stated.'" (131 N.J.L. at 254. In Kramerman, the examiner did not perform an autopsy because he found no evidence of violence or criminality surrounding the death. He merely "assumed" that it was a cardiac case by looking at the body, which assumption was concededly based on his "guess" (131 N.J.L. at 252). See also, Aitken v. John Hancock Mutual Life Ins. Co., 124 N.J.L. 58 (E & A, 1939) which held that the attending physician should have furnished the particulars rather than the county physician as the latter had no knowledge of the facts surrounding death. The court, accordingly, held that the report was not made according to law and rendered it invalid.

Similarly, in Biro v. Prudential Ins. Co. of America, 57 N.J. 204 (1970), the New Jersey Supreme Court reversed the holding of the Appellate Division (110 N.J. Super. 391) that the death certificate was prima facie evidence of the facts stated therein because the medical examiner, in reaching the conclusion that death was caused by suicide, did not rely on facts of which he had personal knowledge. The Supreme Court in Biro based its opinion

on the dissent filed in the Appellate Division where it was noted that:

> With respect to the admission of the contents of a certificate of death which is governed by N.J.S.A. 2A:82-12, declaring that any original death certificate shall be received as prima facie evidence of the facts therein stated. . . , I believe that the majority ignores the fact that the statute refers to facts and not conclusions. "Suicide" is not a fact but a conclusion. Suicide includes both the notion of the instrumentality of death being the decedent (directly or indirectly) and the notion that the decedent intended to take on his own life. (The medical examiner's checking of the suicide box on the death certificate is merely a shorthand way of stating his conclusion that the elements of suicide are made out. (110 N.J. Super. at 405, emphasis supplied by the court).

In Talbott v. Wooster, 61 N.J. Super. 221 (Law Div. 1960), the Court held that the coroner was without power to supply the particulars surrounding death as his authority had been superceded by that of the county physician by statute. The court accordingly found that the death certificate was not made in accordance with the law and noted that "A fortiori, where the death particulars are supplied by a person other than the one authorized by law, the court of equity will assume jurisdiction and delete the unauthorized statement" (61 N.J. Super. at 226).

As the foregoing authorities indicate, when the county medical examiner is called upon to furnish particulars in order to verify the cause of death, he must have personal knowledge of such facts in order that the death certificate be made "according to law." Furthermore, as Talbott, supra, indicates, the "proper person" must furnish particulars and, in this regard, N.J.S.A.

26:6-8 dictates that either the attending physician or the county medical examiner furnish same.

The other class of cases which deal with this area primarily concern the use of records as evidence and circumstances under which a medical examiner may testify. N.J.S.A. 52:17B-92 provides that the records of the office of the state medical examiner, and of the county medical examiners, made by themselves or by anyone under their direction or supervision, or transcripts thereof certified by such medical examiner, shall be received as competent evidence in any court in this state of the matters and facts contained therein. Additionally, it has been held that such records are admissible under Rule 63 (13) of the New Jersey Rules of Evidence. State v. Reddick, 52 N.J. 66 (1968).

In the Reddick case, the medical examiner who performed the autopsy on the decedent died prior to trial. The question was, therefore, raised as to whether his report could be introduced into evidence. In ruling on this question, the court noted the following:

> We hold that the trial court correctly admitted into evidence the medical examiner's report after excising from it all matters of opinion as to the cause of death and other conclusions made by the examining doctor with regard to the place and manner of death. (53 N.J. at 68).

In reaching this conclusion, the court relied on a New York case, People v. Nisonoff, 293 N.Y. 597, 59 N.E.2d 420 (1944), which held that:

> Only so much of the report as contained the findings was offered and no part of the

> examiner's report containing his opinion was offered. Thereafter, the chief medical examiner was called to give opinion testimony as to the cause of death, based upon those findings.

Similarly, in Reddick, supra, the medical examiner, at the time of trial was called upon to give his opinion of the cause of death, based upon the deceased doctor's report. The New Jersey Court allowed such testimony. See also State v. Rios, 17 N.J. 572, 594 (1955) which held that a physician who assisted the county physician perform the autopsy was competent to testify when the county physician was unable to testify due to illness at the time of trial.

In Carroll v. Houtz, 93 N.J. Super. 215 (App. Div. 1966), the Court held that "where, in connection with an autopsy, tissue and blood samples are submitted for testing and analysis, the reports of such tests, when made by the county physician and filed with his report, may be received in evidence where the requirements of N.J.S.A. 2A:82-35 are met" (Now Rule 63 (13), New Jersey Rules of Evidence. The court in Carroll also held that "consent on behalf of decedent to the preparation of the specimens and the making of the analysis was not a prerequisite to admissibility of the report." (93 N.J. Super. at 224).

Section VI: Status New Jersey Administrative Code 13:49-1.1 et seq.

By Executive Order No. 66 (1978) Chapter 49 of the New Jersey Administrative Code titled "State Medical Examiner" which includes sub-chapters 1 through 8 expire on December 19, 1988.

ORGAN TRANSPLANTS

First Assistant Prosecutor Michael E. Riley
Burlington County Prosecutor's Office

On June 3, 1980, the County Prosecutors Association of New Jersey adopted guidelines relating to organ transplants of homicide victims. The guidelines were contained in a memorandum authored by Dr. Robert Goode, M.D., the State Medical Examiner, dated June 6, 1980. In addition to County Prosecutors, Dr. Goode's memorandum has been distributed to all County Medical Examiners and their staffs. The text of that memorandum is as follows:

INTRODUCTION

In certain kinds of death as outlined in N.J.S.A. 52:17B-78 to 94 incl., no one may interfere with the dead body without authorization by the Medical Examiner. When such a decedent's organs are suitable for harvest and transplantation after death, they may not be removed, therefore, without the approval of the Medical Examiner. The following guidelines are hereby published to standardize the criteria and the mechanisms of such approval.

DIRECTIVE

When a death is reported to the Medical Examiner's Office and a request is made for approval of organ harvest for transplantation purposes, the Medical Examiner with jurisdiction must adhere to the following guidelines when considering the request:

A. GENERAL CONDITIONS

1. The Medical Examiner or physician representative must conduct an independent investigation into the circumstances which led up to the death of the person in question. In those counties having lay medical investigators, the latter are to be excluded from taking histories when permission for organ harvest is an issue. The information must include medical treatment data from the attending physician, and the criteria used to establish death as a medical fact; as well as any and all information available from police agencies, ambulance squads, funeral directors, family members, or other primary sources of information.
2. Permission for transplantation must be denied when in the opinion of the Medical Examiner such a procedure would materially interfere with the ability to render an opinion concerning cause and manner of death with reasonable medical certainty.
3. In no circumstance will the Medical Examiner grant permission for organ harvest without the concurrent permission of the family or other persons who will legally accept the responsibility for the deceased's body.

B. SPECIFIC CONDITIONS

1. In cases of homicide, suspected homicide, or suspicious death:

    a. The Medical Examiner must discuss the request for organ harvest with the Prosecutor of the county wherein jurisdiction lies. There must be a clear understanding

that the organ which is to be harvested is a healthy organ and was not responsible for the death; and that removal of this organ does not, in the Medical Examiner's opinion, interfere with the establishment of the proper cause and manner of death. It must also be agreed by both parties, Medical Examiner and Prosecutor, that the removal of a particular organ (s) does not materially jeopardize the adequate prosecution of the incident.

b. In the event all of the above general and specific conditions are met, the Medical Examiner may, at his option, authorize the attending physician to secure proper permission for organ harvest and transplant in accordance with the Uniform Anatomical Gift Act. Where the family grants such permission the attending physician must schedule the harvest operation in such a way that the Medical Examiner can attend the entire harvest procedure.

c. It will be the responsibility of the Medical Examiner to make an examination of the body at the harvest operation and integrate the findings with the subsequent autopsy report. All signs of injury or disease noted at the harvest operation and the details of operative procedure must be documented.

2. In cases of other reportable sudden deaths, which fall under Medical Examiner jurisdiction but are not homicidal, apparently homicidal, or suspicious deaths:

a. The Medical Examiner may, at his option, when in his opinion it is in the best public interest to do so, authorize the attending physician to secure proper permission for organ harvest and transplant in accordance with the Uniform Anatomical Gift Act, after he has conducted a complete investigation into the available facts and circumstances surrounding the death.

b. In those harvest operations where the Medical Examiner need not, or will not be in attendance, it shall be the responsibility of the operating surgeon, who is harvesting the donor organ to make a full and complete listing of the wounds, marks, identifying scars or other external characteristics which are in the vicinity of the operating incisions; and a listing of all findings and procedures which are conducted on the body or in the internal operative field. This record and subsequent reports of organ function shall be supplied to the Medical Examiner of jurisdiction as a matter of course.

3. The Medical Examiner and Prosecutor may grant permission in writing; by witnessed or recorded telephone conversations; by telegram; or by any other permanent instrument of communication.

FIREARMS

Assistant Prosecutor Timothy P. O'Brien
Burlington County Prosecutor's Office

Each year, thousands of firearms come into the possession of New Jersey Law enforcement agencies by way of seizure, forfeiture, or surrender. The County Prosecutor is the legally designated authority to approve the ultimate disposition of such weapons by county law enforcement agencies. The following is a general discussion of the applicable guidelines which should be employed in the retention and disposition of firearms.

I. Retention

Weapons which must be retained as evidence should be inventoried and stored in the evidence vault of the possessing law enforcement agency unless specifically requested to be transferred to the County Prosecutor's evidence vault for trial or appeal purposes. Such weapons should be listed on an accountability control document or log and securely safeguarded in a controlled access storage area by the agency having possession of the weapon. In addition, related evidence such as ammunition, may be held with the weapon and subjected to similar accountability and security procedures.

In cases in which the weapon involved was fired, the weapon and related evidence should be promptly transmitted with required examination request documents, to the New Jersey State Police

Laboratory, Ballistics Unit, for operability and ballistic testing. Where the weapon was not fired, but confiscated, as a result of illegal use or possession, the weapon should be submitted to the Ballistics Unit for operability testing. In cases where the weapons are confiscated but are not instruments of crime, (i.e. voluntary surrender) the weapons should not be routinely submitted to the Ballistics Unit for testing.

Upon disposition of the criminal case, the firearms should be retained for at least 60 days. If an appeal from a conviction is taken, the weapon should be retained until the appeal process has been definitely concluded. If no appeal is taken, the weapon, on approval of the County Prosecutor, should be disposed of at the expiration of the 60 day period. An exception exists in the case of firearms which have been used to perpetrate a homicide. In such cases, those weapons should be retained and not forwarded for destruction.

II. Disposition

Any disposition of firearms requires the approval of the County Prosecutor, and all requests for disposition should be made in writing. (See attached form). Essentially, there are three dispositions which are subject to approval; (1) Destruction; (2) Retention for Departmental Use; or (3) Return to owner.

The vast majority of disposition applications will involve requests for destruction and same should be expeditiously forwarded to the Prosecutor's Office upon completion of the criminal case. As a general proposition, it will be readily seen that the weapon is inappropriate for return to the person from whom it was

seized as the majority of such cases involve situations where the weapon was either unlawfully acquired possessed, or utilized. In such instances, the weapon becomes prima facie contraband and is subject to automatic forfeiture. N.J.S.A. 2C:64-1a(1), N.J.S.A. 2C:64-2. It should also be noted that the same result should obtain in the case of defaced firearms. N.J.S.A. 2C:39-3d. Nonetheless, these types of situations can be more readily resolved where disposition of the offense be it by way of PTI, Plea, or Downgrade, includes a voluntary forfeiture of the weapon as part of the negotiated disposition. (See attached form).

In instances where destruction is approved, the County Prosecutor will so indicate in writing to the law enforcement agency. It is then incumbent upon the local law enforcement agency to coordinate a time and date with the Ballistics Unit, New Jersey State Police Laboratory, West Trenton, for transfer of the weapons for destruction. Such weapons should be listed on an itemized inventory in four copies. Two signed receipt copies should be obtained upon transfer and one of those copies should be forwarded to the County Prosecutor. Transfer of weapons for destruction should be made by the local law enforcement agency to the laboratory within 60 days of authorization by the County Prosecutor.

Cases will also arise where local law enforcement agencies request to return a firearm to its lawful owner subsequent to termination of the case or in the absence of any judicial action. Such request should be made in writing and should identify the individual to whom the firearm will be returned. It is incumbent

upon the local law enforcement agency to insure that the listed individual is legally entitled to receive and possess the firearm at issue. Consequently, a criminal records check should be conducted on the individual and that person should be required to produce appropriate proof of ownership and authorization to possess the weapon. If return to the individual is approved by the County Prosecutor, the requesting agency will be notified in writing. Such requests will generally involve situations where the weapon is recovered stolen property. In such instances, the items should be returned as expeditiously as possible upon completion of the criminal case.

In a distinct minority of cases, local agencies may request retention of firearms for departmental use. Such requests, should be made in writing and submitted to the County Prosecutor for approval. At such time, as a request is approved, the County Prosecutor will forward one copy of the approved request to the Ballistics Unit, New Jersey State Police Laboratory, for control purposes.

In order for approval, there must be an actual current need for such weapons by the agency, and the weapon requested for such use should be approriate for law enforcement purposes. Indiscriminate retention of any or all types of firearms will not be approved by the County Prosecutor.

Prior to release, the weapon will be forwarded to the County Prosecutor, who then retains property rights in the weapon until final disposition. Ownership of weapons approved for retention by local law enforcement agencies, remains with the Prosecutor.

Agencies authorized to retain such weapons must submit, annually, a report to the County Prosecutor listing the weapons in question and certifying that the weapons are on hand, in use for official law enforcement purposes, and that there is a continuing need to retain the weapon. When such a weapon is no longer needed by the local agency, it will be returned to the County Prosecutor.

III. Special Situations

All of the aforementioned guidelines are readily applicable when applied to the norm. Firearms, however, by their very nature can generate unusual situations.

Ofttimes, investigating officers discover firearms as part and parcel of the home environment when they respond to domestic violence or narcotic situations. While a possessory offense may not be established, N.J.S.A. 2C:39-6e, removal of firearms from potentially explosive situations may be justified to obviate a threat to public safety. State v. Cunningham, 186 N.J. Super. 502, 512 (App. Div. 1982). In such cases, the weapon need not be returned even though it had not been used unlawfully, as the circumstances surrounding the seizure may serve to disqualify the owner from possessing weapons pursuant to N.J.S.A. 2C:58-3c. In the absence of such a conviction, the State should seek to rely on the more generalized categories of disqualification set forth in N.J.S.A. 2C:38-3c. In the event that the owner is found to be disqualified, the weapons need not be returned but neither is the State entitled to keep them. State v. Cunningham, 186 N.J. Super. 502, 513 (App. Div. 1982). In such cases, the owner is entitled

to the proceeds from a bona fide sale of the weapons. Id.

Other difficulties arise where weapons come into police custody which do not parallel a case involving the Prosecutor's Office with its attendant case file. Such situations arise with respect to weapons which had been surrendered to or found by the police and the owner is no longer available. Sometimes the matter was adjudicated at the municipal court level. In such instances, all police reports relative to the seizure or acquisition of the weapon must be reviewed in order to determine the appropriate disposition. Where the facts still remain unclear, the agency should be requested to conduct both an N.C.I.C. and ATF trace.

Office of the Prosecutor

County of Burlington
County Courts Facility
Mount Holly, New Jersey 08060
(609) 265-5035

STEPHEN G RAYMOND
PROSECUTOR

Michael E. Riley
First Assistant Prosecutor

James J. Gerrow, Jr.
Chief Trial Attorney

William E. Butterfield
Chief of County Detectives

FIREARMS RELEASE AUTHORIZATION

The Burlington County Prosecutor's Office has approved release of the following firearm(s) to the _____ Police Department. The release of said firearm(s) to the given Municipal Police Department relinquishes any proprietary right once claimed by the Burlington County Prosecutor's Office. Therefore, ownership of the Firearm(s) is to be assumed by the _____ Police Department.

It is to be understood that along with ownership of the following firearm(s) by the _____ Police Department goes the responsibility to insure strict control and proper police utilization by New Jersey Certified Law Enforcement Personnel.

MAKE	MODEL	TYPE	CAL.	SERIAL #

STEPHEN G. RAYMOND
BURLINGTON COUNTY PROSECUTOR

_____
Receiving Authority

By: _____
Assistant Prosecutor

PROSECUTOR FILE NO._____

DEFENDANT_____

DOCKET NO._____

RELEASE

I Understand that Complaint/Indictment No._____ and the Charge _____, under Statute No. _____, is being considered for acceptance into the Pre-Trial Intervention Program.

If such action is granted, I agree, as a condition thereof, that upon entry into the program, I relinquish and waive all of my property rights that may exist in the firearm possessed, carried, acquired, or used by me at the time of my arrest; and in accordance with N.J.S.A. 2C:64-1, said firearm is to be forfeited to the State, and the Office of the Burlington County Prosecutor is authorized to dispose of said firearm in accordance with the provisions of N.J.S.A. 2C:64-1 et. seq.

_____ _____

WITNESS Defendant's Signature

_____ _____

DATE Defense Counsel

RETENTION AND DISPOSITION OF SEIZED, CONFISCATED AND FORFEITED PROPERTY

Assistant Prosecutor Gregg A. Shivers
Burlington County Prosecutor's Office

This chapter of the Prosecutor's Manual deals with the issues of retention and disposition of seized, confiscated, and forfeited property. On November 14, 1983, Frederick DeVesa, Former Deputy Director of the Division of Criminal Justice, authored a memorandum which accurately and succinctly set forth the procedures to be followed when issues are encountered concerning forfeiture and disposition of property.

What follows basically reflects the content of that memo. However, this office has made some minor revisions which for the most part reflect changes which have since occurred in the law.

a. Disposition of Unclaimed Property

There are a number of statutes addressing disposition of unclaimed property found or recovered by law enforcement agencies following a crime.

1. N.J.S.A. 2C:65-1 et seq. Disposition of Stolen Property and Documentary Exhibits.

This provision governs "any article of property alleged to be stolen" which comes into the custody of a law enforcement agency. This definition includes any money coming into the custody of either the police or the prosecutor if it falls within the category of "stolen property." There are, however, special procedures included for disposition of money.

The statute generally provides that any article of stolen property obtained by a law enforcement agency must be assigned a number which must be entered into a suitable log book with a description of the property. The agency is also required to make and retain a complete photographic record of the property. This photographic record, upon proper authentication, is admissible

into evidence in any court in lieu of the property. N.J.S.A. 2C:65-1.

The statute also contains procedures for return of the property to the lawful owner, either before or after disposition of the criminal proceeding. N.J.S.A. 2C:65-2; 2C:65-3. The claimant must present proper personal identification and satisfactory proof of ownership, and sign a sworn declaration of ownership for notification of the appropriate prosecuting agency and other potential claimants. Such disposition of the property must be noted in the log book. If there is any question over who the proper owner of the property is, the agency must retain possession of the property and order a hearing to determine the true ownership.

The most significant provision for our purposes is N.J.S.A. 2C:65-3b, concerning disposition of stolen property which is unclaimed. After the expiration of six months from the final determination of the action, if the person entitled to the property is unknown or fails to apply for its return, the agency is required to apply to the court in which the case was tried which must enter an order specifying what property may be released from the custody of the agency without prejudice to the State. If the property is money, it must be immediately deposited in the general fund of the entity funding the prosecuting agency, i.e., the State, county or municipal treasury. Other property is formally transferred to the entity funding the prosecution by the court clerk for disposal at public sale.

2. N.J.S.A. 53:1-26.1. Possession of Goods for Six Months, etc.

This is a specific statute which applies solely to goods or chattels which come into the possession of the State Police by finding or by being recovered after theft or robbery. If this property remains in the possession of the State Police for six months and the owner or owners are unknown and cannot be found, or refuse to receive such goods or chattels, the statute provides disposition procedures.

Specifically, all unclaimed monies coming into the possession of the State Police must, after six moths, be paid into the State treasury. In addition, after six months any non-perishable goods and chattels may be sold at public auction by the Director of the Division of Purchase and Property in the Department of the Treasury. The statute requires that notice of sale must be published in a newspaper published in this State. If the goods or chattels are perishable, they may be promptly sold without waiting six months to avoid loss. All monies received from the sale of any goods and chattels must be paid into the State treasury.

Thus, this statute is distinguishable from N.J.S.A. 2C:65-1 et seq. It only concerns property which the State Police find or recover from a theft or robbery and not transfer to a prosecuting

agency as evidence for trial. The latter situation should only occur when no suspect is arrested.

3. N.J.S.A. 40A:14-157. Tangible Personal Property Found or Recovered; Disposition.

A similar statute, N.J.S.A. 40A:14-157, exists for tangible personal property coming into the possession of a municipal police department when a member of the force acting in the line of duty finds or recovers the property.[1] If the owner is unknown and cannot be ascertained, or if he refused to receive the property, then the property shall be disposed after six months, with the exception of motor vehicles which shall be disposed of in accordance with P.L. 1964, (c.39:10A-1 et seq). However, all unclaimed monies coming into the possession of any municipal police department must be turned over within 48 hours to the municipal treasurer for retention in a trust account and, after six months, if unclaimed by any person entitled thereto, be paid into the general municipal treasury.

All other tangible personal property is disposed at public auction after the municipal governing body by resolution provides for the sale. Notice of the sale is required not less than 10 days prior thereto in a newspaper circulating within the municipality. Perishable items may be sold without references to the statutory time periods. Monies received from the sale of any such property must be paid into the general municipal treasury.

Again, this statute concerns unclaimed property found by the municipal police or which is recovered from a crime and not transferred to a prosecuting agency as evidence for a trial. The latter situation should only occur when no suspect is arrested.

This statute was enacted by P.L. 1971, c.197, eff. July 1, 1971, and amended by P.L. 1975, c.306, Sec. 1, eff. March 3, 1976 and by L. 1986, c.173, 2, eff. Dec. 8, 1986.

4. R.3:5-7(e). Return of Seized Property.

This Court rule provides for return of property seized by a law enforcement officer pursuant to a search warrant or warrantless search of a person entitled to the property makes a timely application to the court and establishes unlawful detention. This rule does not authorize return of prima facie contraband. Also, the State need not return the property until the expiration of time within which the prosecutor may make an application for leave to appeal. State v. Muldowney, 60 N.J. 594 (1972); State v. Rodriguez, 138 N.J. Super. 575 (App. Div. 1976), aff'd o.b. 73 N.J. 463 (1977). Although the rule does not

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[1] If the property is found or discovered by a civilian and turned over to the police, it is returned to the finder if unclaimed after six months, with the exception of motor vehicles. N.J.S.A. 40A:14-157b.

expressly so state, it has been construed as permitting the prosecutor on proper showing of probable cause to retain property not prima facie contraband pending initiation of a civil forfeiture action within a reasonable time. See State v.Rose, 173 N.J. Super. 478 (App.Div. 1980). This rule is inapplicable following an adverse disposition of a criminal prosecution to a defendant seeking return of non-contraband. In such circumstances, the defendant must file a replevin action in order to obtain a return of seized property. State v. Howery, 171 N.J. Super. 182 (App. Div. 1979).

5. Escheat - N.J.S.A. 2A:37-11 et seq.

Under the provisions of this statute the State may institute proceedings for judgment of escheat of abandoned property after the passage of the requisite time periods.

b. Forfeiture of Property

There are a number of enactments which constitute "legislative or statutory" forfeitures, as distinguished from "common law or judicial" forfeitures. A statutory or legislative forfeiture is an in rem proceeding, directed not against the owner or possessor of the property but against the property itself, which is treated as the real offender. Such a forfeiture takes place at the time of the commission of the offense, even though the proceedings are instituted at a later date. Thus, the rights of the state after judicial determination date back to the time of the offense. See N.J.S.A. 2C:64-7; State v. Moriarty, 97 N.J. Super. 458, 472-473 (Law Div. 1967), aff'd 102 N.J. Super. 579 (App.Div. 1968), aff'd 55 N.J. 31 (1969). See generally, 37 C.J.S. Forfeitures, Sec. 1 et seq. at p.4. Forfeiture statutes are enacted to discourage and prevent unlawful conduct. Id. at 474. The procedural requisites are settled:

> It can be conceded that where an article is not inherently contraband but becomes so because of the use to which it is put, due process requires notice and opportunity to be heard before a forfeiture is effectuated. 12 am. Jur., Sec. 677, p. 358.
>
> Where property is inherently dangerous to the public health and morals it may be declared contraband and destroyed under the sovereign power of the State, and the only question for review in a judicial proceeding is whether the officers making the seizure exceeded their authority under the applicable statute. But where property is not inherently dangerous to the public health and morals but becomes so because of the use to which it is put, due process requires notice and opportunity to be heard before the taking of

> the property as contraband results in an absolute forfeiture of all rights therein. The diversity of the various problems and the facades thereof and the forfeiture of right in contraband are discussed Berry v. Ackley v. Demaris, 76 N.J.L. 301, 307 (Sup. Ct. 1908); 12 Am. Jur., sec. 6787, p. 358 et seq. (Spagmuolo v. Bonnet, 16 N.J. 546, 557 (1954).

In many instances property coming into the possession of law enforcement authorities should be considered the means or fruits of the commission of crime and are subject to disposition pursuant to forfeiture statutes.

1. N.J.S.A. 2C:64-1 et seq. Forfeiture (replaces forfeiture provisions in repealed N.J.S. 2A:152-6, 7, 8, 9.2, 9.3, 10, 11, 12; N.J.S. 2A:151-16, N.J.S.A. 24:21-35).[2]

Chapter 64 defines prima facie contraband and other property, including money which is earmarked for use as financing for an illegal activity such as a gambling enterprise, and the proceeds of illegal activities, such as money obtained as a result of the sale of prima facie contraband[3] or proceeds of illegal gambling, prostitution, bribery or extortion.

Only prima facie contraband or property posing an immediate threat to public health, safety, or welfare may be seized without court process. All other property, including money, may only be retained for forfeiture by institution of a civil action, instituted within 90 days of the seizure and commenced by the State, though N.J.S. 2C:64-4(a) provides that nothing in that chapter precludes the right of the state to retain evidence pending a criminal prosecution. If the civil action is instituted notice must be given to any person known to have a property interest in the article and the notice requirements of the court rules for an in rem action must be followed. If no answer is filed then the property must be disposed of pursuant to N.J.S. 2C:64-6. If an answer is filed by the claimant within the requisite period, a summary hearing is held which may be stayed pending the disposition of criminal proceedings.[4]

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[2] I.e., controlled dangerous substances, firearms which are unlawfully possessed, carried, acquired or used, illegally possessed gambling devices and untaxed cigarettes.

[3] I.e., controlled dangerous substances, firearms which are unlawfully possessed, carried, acquired or used, illegally possessed gambling devices and untaxed cigarettes.

[4] N.J.S. 2C:64-5 provides that owners of property that is not prima facie contraband who are able to prove by a preponderance of the evidence that they were not involved or not aware that the property was being used for an illegal purpose will be able to prevent the property from being forfeited. This provision was designed primarily to give relief to those persons who lease

Except as provided by N.J.S. 2C:35-21, prima facie contraband is automatically forfeited on entry of judgment or dismissal of the criminal proceedings, if any, which may have arisen out of the seizure. Termination of criminal proceedings without a conviction does not preclude forfeiture proceedings. Property which has been forfeited must be destroyed if it serves no lawful purpose or presents a danger to the public health, safety or welfare. With respect to firearms, the Association adopted a policy in 1978 on retention and disposition of weapons, confiscated or surrendered to county or local authorities. All other forfeited property or any proceeds resulting from the forfeiture and all money seized pursuant to this statute must go to the prosecuting agency which handled the action. This agency must divide the forfeited property with any other agency which took part in the surveillance, investigation, arrest or prosecution which resulted in the forfeiture. As determined in the discretion of the prosecuting agency such proceeds shall only be used for law enforcement purposes and for the exclusive use of any agency who contributed.

2. The following forfeiture provisions have been repealed by N.J.S.A. 2C:98-2:

Old Statute	Subject	Revised Sections
N.J.S.A. 2A:152-5	Seizure and Disposition of Obscene and Indecent Books, etc.	Not enacted (this provision was not reenacted by the Code)
N.J.S.A. 2A:152-7	Destruction of Gaming Apparatus	2C:64-1 2C:64-6
N.J.S.A. 2A:152-7	Money Seized on Arrest for Playing Unlawful Games (Money seized by law enforcement officer in connection with gambling violation deemed prima facie contraband)	2C:64-1 2C:64-3

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property in their regular course of business.

N.J.S. 2C:35-21 deals with the destruction of bulk seizures of controlled dangerous substances and will be discussed in the second half of this chapter.

N.J.S.A.	2A:152-8	Disposition pending trial of moneys seized (money seized in gambling prosecution shall be accounted for and deposited with county treasurer under supervision of prosecutor)	2C:64-4
N.J.S.A.	2A:152-9	Disposition, on conviction of money seized; order of forfeiture (forfeiture procedures for gambling monies)	2C:64-3 2C:64-4
N.J.S.A.	2A:152-9.1	Application for order for forfeiture (procedure for county treasurer to apply for order)	Not enacted
N.J.S.A.	2A:152-9.2	Notice by treasurer (public notice provisions)	2C:64-3
N.J.S.A.	2A:152-9.3	Hearing	2C:64-3
N.J.S.A.	2A:152-9.4	Filing certified copy of order	Not enacted
N.J.S.A.	2A:152-9.5	Additional remedy	Not enacted
N.J.S.A.	2A:152-10	Acquitted; disposition of monies seized; claimant's application for forfeiture (procedures after acquittal in gambling prosecutions)	2C:64-4
N.J.S.A.	24:21-35	Nuisances and forfeitures (C.D.S. violations)	2C:64-1

c. Miscellaneous Disposition Provisions

1. N.J.S.A. 2C:58-7. Persons possessing explosives or destructive devices to notify police.

This provision requires persons in possession of explosives or destructive devices [unless possessed for a commercial purpose or other lawful purpose with which the use of explosives is authorized or as authorized in N.J.S. 2C:39-6(d)] to notify local police authorities or the State Police that the same is in their possession. Upon discovery by police authorities that the item is loaded or of dangerous character, it shall be destroyed unloaded

or so processed as to remove its dangerous character before being returned to the possessor.

2. N.J.S.A. 2A:123-10. Confiscation of Improperly Manufactured Wearing Apparel.

This provision allows the Commissioner of the Department of Labor and Industry to institute proceedings in Superior Court for the confiscation of improperly manufactured wearing apparel, with disposition of the apparel in accordance with court order.

3. N.J.S.A. 2C:33-12.1. Disposition of chattels, liquors or other personal property found in a building constituting a nuisance.

This provision empowers the court to order the seizure and forfeiture or destruction of any chattels, liquors or other personal property which is found in a building constituting a nuisance and which the court is satisfied from the evidence were possessed or used with a purpose of maintaining the nuisance. Any forfeiture shall be to the State of New Jersey and the court shall direct the forfeited property to be sold at public sale, the proceeds to be paid to the treasurer of the county wherein conviction was had.

4. N.J.S.A. 33:1-66. Seizure, Forfeiture, Replevin, Sale, etc., of Unlawful Property Under the Alcoholic Beverage Law.

This provision governs the disposition of property which is the product of, or used for the purpose of, unlawful alcoholic beverage activity under the Alcoholic Beverage Law.

5. N.J.S.A. 33:2-5. Disposition of Unlawful Property pertaining to Stills and Distilling Apparatus.

This provision empowers the Commission of Alcoholic Beverage Control to declare forfeited unregistered stills, all paraphernalia used in connection with such stills, and all personal property found in a building or in any yard or enclosure connected with a building or on the premises in which such stills or distilling apparatus or parts thereof are found. The commissioner may, in his discretion, order that the seized property be sold, destroyed, or retained for the use of hospitals and state, county and municipal institutions and that the building or premises in or on which the unlawful property was located when seized shall not be occupied or used for any purpose whatsoever for a period not to exceed one year, as fixed by the commissioner.

6. N.J.S.A. 40A:9-58. Disposal of Personal Property of Unknown Decedent.

This provision requires the county medical examiner to make an inventory of the personal property found on or pertaining to an unknown decedent and to file a copy of the inventory with the

clerk of the board of chosen freeholders. Within 20 days after the death, the personal property and copy of the inventory shall be delivered to the county treasurer. After 20 days following the delivery, the county treasurer, in his discretion, may sell the property at public or private sale. If the sale's proceeds are not claimed by a personal representative of the decedent within two years after the sale, the proceeds shall become the property of the county.

7. N.J.S.A. 40A:9-61. Disposition of Personal property found on Shipwrecked Bodies.

This provision requires the county medical examiner to take possession of all monies, goods or other personal property found on the body of a shipwrecked person and to utilize such property as is reasonably necessary for the burial of the body. The remainder of the property shall be delivered by either the State Medical Examiner or county medical examiner to the State Treasurer and, if not claimed within two years by persons entitled thereto, such property shall escheat to the State.

d. Disposition of Office Records

Destruction and retention of administrative records and case files is governed by the records management schedule of the Prosecutors' Association submitted to the Bureau of Archives.

Conclusion

In sum, it is not legally permissible to dispose of all categories of physical evidence pursuant to the records management schedule. Stolen property must be released to the lawful owner pursuant to N.J.S.A. 2C:65-2 and 3. Contraband property must be disposed of pursuant to the appropriate forfeiture proceeding. Abandoned and unclaimed property must also be disposed of in accordance with the proper statutory provision. It is suggested that the County Prosecutors' Association consider adopting uniform guidelines to embrace all statutes and schedules pertaining to the disposition of property and evidence.

A. PRETRIAL DISPOSITION OF BULK SEIZURES OF CONTROLLED DANGEROUS SUBSTANCES

Introduction

The second half of this chapter addresses the issue of pretrial disposition of bulk seizures of controlled dangerous substances (CDS). Prior to August 1987 the controlling case appeared to be United States v. Heiden, 508 F.2d 898 (9th cir. 1974). It should also be noted that the Heiden case was cited with approval in the 1979 Appellate Division case, State v. Washington, 165 N.J. Super. 149 (App. Div. 1979).

The problems which are connected with bulk seizures of CDS arise from the lack of adequate storage facilities to accommodate continued retention of this contraband through final judgment of conviction. Prior to the enactment of N.J.S. 2C:35-21 (which now deals with this problem) it was already understood that contraband did not need to be preserved for trial provided that appropriate measures were taken to insure against violation of New Jersey's discovery rules and of a criminal defendant's rights to due process and confrontation.

It was well settled that the prosecution need not prove its case with real evidence, that is, by offering as an exhibit the contraband found in a defendant's possession. See, e.g., Lebron v. United States, 241 F.2d 885, 887 (1 Cir. 1957), cert. den. 354 U.S. 911 (1957). The nature of physical objects may be proved by parol evidence. Production of objects themselves is merely cumulative. Francis v. United States, 239 F.2d 560, 562 (10 Cir. 1956). Thus, "where evidence is scientifically analyzed and then

lost, unintentionally or in the absence of bad faith, the result of the analysis is still admissible at trial." Gedicks v. State, 62 Wis.2d 74, 214 N.W.2d. 569, 573 (Sup. Ct. 1974). The loss of real evidence goes to the weight of that evidence but not to its admissibility. Id.; United States v. Pullings, 321 f.2d 287, 296 (7 Cir. 1973), overruled on other grounds sub. nom. United States v. White, 405 F.2d 838, 848 n.16 (7 Cir. 1969), rev'd 401 U.S. 745 (1971).

In 1987 N.J.S. 2C:35-21 became effective and thus provided the statutory answer to the problems and issues discussed above. The statute now authorizes the prosecuting agency, upon notice to defense counsel, to apply to the trial court for an order to destroy all or some portion of seized CDS. The statute requires that, prior to the destruction of such bulk substances, the forensic laboratory which analyzes the substance make a photographic record thereof. Accordingly the statute provides that notwithstanding any other provision of law, this photographic record, upon proper authentication, may be introduced as evidence in any court.

This statute also provides that a defendant or his counsel may make a timely objection to the prosecutor's application, however, the decision to order the destruction is vested wholly in the sound discretion of the trial court.

The comments to the statute further explain that the rule also applies to substances which may not be prima facie illegal such as ether, and certain acid or solvents which are routinely used in the conversion and manufacture of illicit drugs.

EXTRADITION AND DETAINERS

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Extradition is the surrender by one state to another of an individual accused or convicted of an offense outside its own boundaries and within the territorial jurisdiction of the demanding state.[1] Extradition involves both the demand by one state and the surrender by the asylum state. The return of a fugitive from one state to another is a federal, not a state matter governed by the United States Constitution.[2] The federal provisions are implemented by N.J.S.A. 2A:160-1 et. seq. (The Uniform Criminal Extradition Law).[3] Extradition from New Jersey is governed by N.J.S.A. 2A:160-10 to 30. That statutory scheme reflects the provisions of the Uniform Criminal Extradition Act and applies to all signatory states. Therefore, the analysis which follows is equally applicable to situations in which New Jersey prosecutors are seeking to extradite fugitives present in other states.

Consistent with the provisions of the Uniform Criminal Extradition Act and the United States Constitution, it is the duty of the Governor to have arrested and deliver to the executive

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[1]See State v. Sinacore, 151 N.J. Super. 106, 111-112 (Law Div. 1977).

[2]U.S. Const., Art. IV, Sec. 2, Ch. 2 and 18 U.S.C.A. § 3182-3195.

[3]State v. Phillips, 62 N.J. Super. 70, 74 (App. Div. 1960), aff'd 34 N.J. 63 (1961); Foley v. State, 132 N.J. Super. 154, 157 (App. Div. 1954).

authority of another state any person charged with a crime in that state, who has fled from justice and is found in New Jersey. N.J.S.A. 2A:160-10. The Governor has little discretion in exercising this duty. He may only consider whether the extradition documents on their face are in order, whether the person held in the asylum state has been charged with a crime in the demanding state, whether the person held in the asylum state is the person named in the request for extradition, and whether the person held in the asylum state is a fugitive from the demanding state.[4] Moreover, federal courts have authority under the Constitution to compel the asylum state to deliver up fugitives upon proper demand.[5] Extradition is permitted not only when an accused has fled from the demanding state. It is also authorized when the accused has committed an act in any jurisdiction intentionally resulting in a crime in the demanding state.[6] N.J.S.A. 2A:160-11 describes the documentation needed to support a demand for extradition. Specifically, the demand must be in writing and allege that the accused was present in the demanding state at the appropriate time (except in cases arising under N.J.S.A. 2A:160-14) and must be:

> accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or by copy of a Judgment of Conviction or of a sentence

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[4]California v. Superior Court of California, 107 S.Ct. 2433 (1987).

[5]Puerto Rico v.. Branstad, 107 S.Ct. 2802 (1987).

[6]N.J.S.A. 2A:160-14.

> imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. (N.J.S.A. 2A:160-11).

If so requested by the Governor, the Attorney General or County Prosecutor should investigate the matter. A report should be submitted to the Governor regarding the circumstances relating to the accused. The report should set forth the Prosecutor's conclusion as to whether the accused ought to be surrendered.[7] The guilt or innocence of the fugitive regarding the crime of which he is accused may not be questioned except as it may be involved in identifying the person held as the individual charged.[8] There is no obligation on the Governor to conduct a hearing for the benefit of the accused before ordering his removal. The accused has no constitutional right to be heard before the Governor.[9] If the governor decides to comply with the requisition demand, he must issue an arrest warrant (also referred to as an extradition warrant or rendition warrant) containing recitals of the facts necessary to the validity of its issuance.[10] Upon arrest, and prior to being delivered to the duly authorized agent of the demanding state, the accused must be brought before a court and advised of his rights (including his right to counsel). He must also be offered the opportunity to test the legality of his arrest if he so desires.[11]

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[7] N.J.S.A. 2A:160-14.

[8] N.J.S.A. 2A:60-28; In re Cohen, 23 N.J. Super. 209, 216 (App. Div. 1952), aff'd o.b. 12 N.J. 362 (1953).

[9] Id. at 214-215.

[10] N.J.S.A. 2A:160-15.

[11] N.J.S.A. 2A:160-18.

An accused can be arrested before a formal requisition is made either on a fugitive warrant[12] or without a warrant upon information that he is charged with a crime in another state punishable by imprisonment for more than one year and a complaint under oath is made.[13] Individuals so arrested are to be arraigned before the appropriate municipal or county judge who must commit the accused to the county jail for a period of 30 days.[14] The accused may be held for an additional 60 days if the appropriate Governor's Warrant is being processed by the demanding state.[15] The demanding state should be notified as soon as practicable following the apprehension of the fugitive. Until such time as a Governor's Warrant is issued, a person arrested may be admitted to bail unless he is charged with an offense punishable by death or left imprisonment in the demanding state.[16] Once the Governor's Warrant is issued, a fugitive/defendant may not be admitted to bail in the asylum state.[17] Bail may be granted in non-fugitive extradition proceedings only when it is reasonably certain that the state will be able to fulfill its obligation to turn the defendant over to the demanding state at the appropriate time.[18]

A fugitive may voluntarily consent to return to the demanding state hence obviating the need to pursue formal extradition procedures. The Prosecutor should ascertain whether a fugitive

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[12] N.J.S.A. 2A:160-21.
[13] N.J.S.A. 2A:160-22.
[14] N.J.S.A. 2A:160-23.
[15] N.J.S.A. 2A:160-25.
[16] N.J.S.A. 2A:160-24.
[17] In the Matter of Basto, 108 N.J. 480 (1987).
[18] Id. at 492.

will waive extradition as soon as practicable after his apprehension. If so, a waiver should be obtained pursuant to N.J.S.A. 2A:160-30, and the demanding state notified.

If a fugitive desires to test the legality of his arrest (pursuant to a Governor's Extradition Warrant), he shall be given sufficient time to apply for a Writ of Habeas Corpus.[19] The scope of inquiry in an Interstate Rendition Hearing (Extradition Proceeding) is limited to (1) the legality of the extradition papers, (2) the identity of the accused as the person named in the requisition and rendition warrant, (3) whether the accused has been charged with a crime in the demanding state and (4) whether the accused is a fugitive from justice. This last inquiry requires a determination that when the crime was committed the accused was within the demanding state at the time of its commission.[20] The demanding authority's warrant is presumptive evidence of the accused's present in that state. The accused bears the burden of overcoming this prima facie evidence by clear and convincing proof that he was in fact absent.[21] The guilt or innocence of the accused may not be challenged.[22] Moreover, the asylum state has no authority to adjudge the technical sufficiency of the indictment, the motives underlying the proceedings, the

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[19] N.J.S.A. 2A:160-18.
[20] State v. Phillips, supra; Foley v. State, supra; In re Cohen, supra.
[21] Id.
[22] N.J.S.A. 2A:160-28

merits of the trial or whether the accused's constitutional rights were violated.[23]

If a decision is made to return a fugitive, and he will not waive his right to extradition the procedural steps in N.J.S.A. 2A:160-32 must be followed. Specifically:

> a. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.
>
> b. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the Parole Board, or the warden of the institution or sheriff of the county from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

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[23] State v. Phillips, supra; In re Cohen, supra; State v. Wilson, 135 N.J.L. 398 (Sup. Ct. 1947); Frank v. Naughright, 1 N.J. Super. 242 (App. Div. 1949).

> c. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or if the complaint made to the judge or magistrate stating the offense with which the accused is charged, or of the Judgment of Conviction or of the sentence. The prosecutor's office, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he or it shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the Judgment of Conviction or of the sentence shall be filed in the office of the Secretary of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's Requisition.

Particular care should be taken to ensure that the appropriate documentation is furnished.

INTERSTATE AGREEMENT ON DETAINERS

The Interstate Agreement on Detainers establishes uniform procedures for transferring inmates imprisoned in one state to the temporary custody of another state in order to resolve untried indictments, information or complaints. The agreement has been adopted by statute in all the states except Mississippi and Louisiana and is codified in New Jersey by N.J.S.A. 2A:159A-1, et. seq. The agreement does not apply to detainers based on parole or probation violations.[24] (Probation and parole violators incarcerated in a sister state may be returned to New

[24] Carchman v. Nash, 105 S.Ct. 3401, 87 L.Ed.2d 516. (1985).

Jersey by means of an Executive Agreement between the respective governors).

The substance of the Interstate Agreement on Detainers is contained in N.J.S.A. 2A:159A-3, Request for Final Disposition of Pending Indictments, Information or Complaints; N.J.S.A. 2A:159A-5 Offer of Temporary Custody. Those statutes read as follows:

2A:159A-3

> a. Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner.
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> b. The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the

certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

c. The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

d. Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

e. Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of is body in court where his presence may be required in

order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of his agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

f. Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

2A:159A-4

a. The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with Article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated: provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

b. Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State Parole Agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving State who

have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

c. In respect of any proceeding made possible by this Article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

d. Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

e. If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

2A:159A-5

a. In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany written notice provided for in Article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody

as provided by this agreement or to the prisoner's presence in Federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

b. The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

1. Proper identification and evidence of his authority to act for the State into whose temporary custody the prisoner is to be given.

2. A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

c. If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

d. The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

e. At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

f. During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

g. For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

h. From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, information or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

The United States Supreme Court in Cuyler v. Adams, 449 U.S. 433, (1981), establishes that a prisoner has a right to a pre-transfer hearing when his transfer is sought pursuant to N.J.S.A. 2A:159A-4. Note that when a prisoner requests transfer pursuant to N.J.S.A. 2A:159A-3 that request is deemed to be a waiver of

extradition under section (e) of that statute and no judicial hearing is required. The court held that a prisoner to be voluntarily transferred to another state to face criminal charges has the same rights as those to be involuntarily extradited under the Uniform Criminal Extradition Law. A prisoner, therefore, has a right to be taken before a judge who will inform him of the demand made for his surrender, the crime with which he is charged, that he has a right to legal counsel and that he has a right to apply for a writ of habeas corpus. The scope of the habeas corpus hearing, should the prisoner demand one, is identical to the scope of the extradition habeas corpus hearing, i.e., (1) are the papers in order, (2) is the prisoner the same person sought by the demanding state, (3) is the prisoner charged with a crime in the demanding state and (4) is the prisoner a fugitive from the demanding state.

At the annual conference May 29-June 1, 1988, the Detainer Manual Committee of the National Association of Extradition Officials suggested the following guidelines for prosecuting attorneys:

FORM 867 - I

Revised
1/15/88

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

In triplicate one copy of this form, signed by the prisoner and the Warden, should be retained by the Warden. One copy, signed by the Warden, should be retained by the prisoner. One copy to the Agreement Administrator in the sending State.

Agreement on Detainers: Form I

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

Inmate_____ No._____ Inst._____

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations or complaints against you concerning which the undersigned has knowledge and the source and contest of each.

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the State to those prosecuting officials your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify _____ of the institution in which you are confined.

You are also advised that under provisions of said Agreement, the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Governor of this State to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery.

Dated: _____ _____
(insert name & title of custodial authority)

BY: _____
Warden - Superintendent - Director

RECEIVED

DATE: _____

INMATE: _____ NO _____

_____ I do not wish to pursue my right under the Agreement on Detainers at this time.

_____ I do wish to pursue my right under the Agreement on Detainers.

_____
Inmate Signature

Witness: _____

FORM 867 - II

Revised
1/15/88

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

Five copies, if only one jurisdiction within the state involv has an indictment, information or complaint pending. Addition copies will be necessary for prosecuting officials and clerks of cou if detainers have been lodged by other jurisdictions within the st involved. One copy should be retained by the prisoner. One sign copy should be retained by the Warden. Signed copies must be sent the Agreement Administrator of the State which has the prison incarcerated, the prosecuting official of the jurisdiction wh placed the detainer and the clerk of the court which have jurisdict over the matter. The copies for the prosecuting officials and t court must be transmitted by certified or registered mail, retu receipt requested.

Agreement on Detainers: Form II

INMATES'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: _____, Prosecuting Officer, _____
(jurisdiction)

_____, Court _____
(jurisdiction)

And to all other prosecuting officers and courts of jurisdictio listed below from which indictments, informations or complaints a pending.

You are hereby notified that the undersigned is now imprisoned i

_____ at _____
(institution) (town and state)

and I hereby request that a final disposition be made of the follow indictments, informations or complaints now pending against me:

Failure to take action in accordance with the Agreement on Detaine to which your State is committed by law, will result in t invalidation of the indictments, informations or complaints.

I hereby agree that this request will operate as a request f final disposition of all untried indictments, informations complaints on the basis of which detainers have been lodged against from your State. I also agree that this request shall be deemed to my waiver of extradition with respect to any charge or proceedi comtemplated hereby or included herein, and a waiver of extradition your State to serve any sentence there imposed upon me, aft completion of my term of imprisonment in this State. I also agr that this request shall constitute a consent by me to the producti of my body in any court where my presence may be required in order effectuate the purposes of the Agreement on Detainer and a furth consent voluntarily to be returned to the institution in which I a now confined.

If jurisdiction over this matter is properly in another agency, court or officer, please designate the proper agency, court or officer and return this form to the sender.

The required Certificate of Inmate Status and Offer of Temporary Custody are attached.

Dated: _____ _____
(inmate's name and number

The inmate must indicate below whether he has counsel or wishes the courts to appoint counsel for purposes of any proceedings preliminary to trial which may take place before his delivery to the jurisdiction in which the indictment, information or complaint is pending. Failure to list the name and address of counsel will be construed to indicate the inmate's consent to the appointment of counsel by the appropriate court in the receiving State.

A. My counsel is _____
(name of counsel)

whose address is _____
(street, city and State)

B. I request the court to appoint counsel.

_____
(inmate's signature)

FORM 867 - III

Revised
1/15/88

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all copies of Form 2. In the case of a request initiated by a prosecutor under Article IV, copy of this Form should be sent to prosecutor upon receipt by the Warden of Form 5. Copies also should be sent to all other prosecutors in the same State who have lodged detainers against the inmate. A copy may be given to the inmate and one copy is to be sent to the Agreement Administrator in the sending State.

Agreement on Detainers: Form III

CERTIFICATE OF INMATE STATUS

Re: _____
(inmate) (number) (institution) (location)

The (custodial authority) hereby certifies:

1. The term of commitment under which the prisoner above named is being held;

2. The time already served;

3. Time remaining to be served on the sentence;

4. The amount of good time earned;

5. The date of parole eligibility of the prisoner;

6. The decisions of the Board of Parole relating to the prisoner: (if additional space is needed, use reverse side);

7. Maximum expiration date under present sentence;

8. Detainers currently on file against this inmate from your State are as follows:

Dated: _____

_____
Custodial Authority

BY: _____
Warden - Superintendent - Director

FORM 867 - IV

Revised
1/15/88

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all copies of Form 2. In the case of a request initiated by a prosecutor this Form should be completed after the Governor has indicated his approval of the request for temporary custody or after the expiration of the 30 day period. Copies of this Form should then be sent to all officials who previously received copies of Form 3. One copy also should be given to the prisoner and one copy should be retained by the Warden. Copies mailed to the prosecutor should be sent by certified or registered mail, return receipt requested. A copy is to be sent to the Agreement Administrator in the sending State.

Agreement on Detainers: Form IV

OFFER TO DELIVER TEMPORARY CUSTODY

Date: _____

TO: _____ Prosecuting Officer
(insert name and title if known)

_____
(jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

Re: _____ Number: _____
(inmate)

Dear Sir:

Pursuant to the provisions of Article V of the Agreement on Detainers between this State and your State, the undersigned hereby offers to deliver temporary custody of the above named prisoner to the appropriate authority in your State in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is (described in the attached inmate's request) (described in your request for custody of _____).
(date)

(The required Certificate of Inmate Status is enclosed.) (The required Certificate of Inmate Status was sent to you with our letter of _____).
(date)

If proceedings under Article IV(d) of the Agreement are indicated, an explanation is attached.

Indictments, information or complaints charging the following offenses also are pending against the inmate in your State and you are hereby authorized to transfer the inmate to custody of appropriate authorities in these jurisdictions for purposes of disposing of these indictments, informations or complaints.

Offense	County or Other Jurisdiction
_____	_____
_____	_____
_____	_____
_____	_____

If you do not intend to bring the inmate to trial, will you please inform us as soon as possible.

Kindly acknowledge.

_____
(name and title of custodial authority)

BY: _____
(Warden - Superintendent - Director

_____
(Institution and address)

FORM 867 - V

Revised
1/15/88

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

Five copies. Signed copies must be sent to the prisoner and to the official who has the prisoner in custody. A copy should be sent to the Agreement Administrator of the State which has the prisoner incarcerated. Copies should be retained by the person filing the request and the judge who signs the request.

Agreement on Detainers: Form V

REQUEST FOR TEMPORARY CUSTODY

TO: _____ _____
(Warden - Superintendent - Director) (Institution)

_____
(Address)

Please be advised that _____, who is presently an inmate of your institution, is under (indictment) (information) (complaint) in the _____ of which I am the _____.
(jurisdiction) (title of prosecuting officer)

Said inmate is therein charged with the (offense) (offenses) enumerated below:

_____

_____

_____

I propose to bring this person to trial on this (indictment) (information) (complaint) within the time specified in Article IV(c) of the Agreement.

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such persons pursuant to Article IV(a) of the Agreement on Detainers.

Signed _____

Title _____

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

DATED: _____ Signed _____
(Judge)

_____
(Court)

FORM 867 - X

Revised
1/15/88

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

ARTICLE IV
Agreement on Detainers

Waiver of Extradition

TO_____Governor's Counsel, State of New Jersey.

TO_____Administrator, Agreement on Detainers, New Jersey Department of Corrections.

TO: _____Administrator, Agreement on Detainers,

State of _____ Agency: _____

Distribution:

Original to Inmate
cc: NJ Administrator
cc: Superintendent
cc: Governor's Office
cc: Out-of-State Administrator

I, _____, No. _____do hereby accept temporary custody requested by _____, State of (prosecuting agency) _____; and do hereby waive my right to a hearing prior to (receiving state) return to _____for the purpose of disposing all detainers (receiving state) lodged against me by prosecuting agency(s) within _____. (receiving state)

In accordance with the Agreement, I further agree not to contest my return to the State of New Jersey from _____after adjudication of all pending indictments, informations or complaints on the basis of which detainers have been filed.

I have read or _____has read and explained to me the specific conditions of this waiver.

_____ _____
Witness' Signature Date

_____ _____
Signature of Inmate & Number Date

FORM 867 - VI

Revised
1/15/88

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

In quadruplicate. All copies, signed by the prosecutor and the agent should be sent to the Administrator in the receiving State. After signing all copies, the Administrator should retain one for his/her files, send one to the Warden of the institution in which the prisoner is located and return two copies to the prosecutor who will give one to the agent for use in establishing his authority and place one in his/her files.

Agreement on Detainers: Form VI

EVIDENCE OF AGENT'S AUTHORITY TO ACT FOR RECEIVING STATE

TO: _____
Administrator of the Agreement on Detainers

_____ is confined in _____
(institution and address)

_____, and will be returned to this jurisdiction

for trial on _____. In accordance with Article V(b), I
(date & approx. hour)

have designated _____ whose signature appears
(agent)

below as agent to return the prisoner.

_____
(prosecuting official)

_____
(agent's signature)

TO: Warden

In accordance with the above representation and the provisions of the Agreement on Detainers, _____, is hereby
(agent)

designated as agent for this State to return _____
(inmate)

for trial.

_____
Administrator

Council of State Governments
36 West 44th Street
New York 36, New York

FORM 867 - VII

Revised
1/15/88

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

IMPORTANT: This form should only be used when an offer of temporary custody has been received as the result of a prisoner's request for disposition of a detainer. If the offer has been received because another prosecutor in your State has initiated the request, use Form 8. Copies of Form 7 should be sent to the warden, the prisoner, the other jurisdictions in your State listed in the offer of temporary custody and the Agreement Administrator of the State which has the prisoner incarcerated. Copies should be retained by the person filing the acceptance and the judge who signs it.

Agreement on Detainers: Form VII

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER

TO: _____ _____
(Warden, Superintendent, Director) (Institution)

_____
(Address)

In response to your letter of _____ and offer of temporary
(Date)
custody regarding _____ who is presently under
(Name of Prisoner)
indictment, information, complaint in the _____ of which
(Jurisdiction)
I am _____, please be advised that I accept
(Title of Prosecuting Officer)
temporary custody and that I propose to bring this person to trial on the indictment, information, complaint named in the offer within the time specified in Article III(a) of the Agreement on Detainers.

COMMENTS: (If your jurisdiction is the only one named in the offer of temporary custody, use the space below to indicate when you would like to send your agents to conduct the prisoner to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your State, use the space below to make inquiry as to the order in which you will receive custody or to indicate any arrangements you have already made with other jurisdictions in your State in this regard.)

Signed: _____
Title: _____

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

Dated: _____ Signed: _____
(Judge)

_____
(Court)

FORM 867 - VIII 1/15/88

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

IMPORTANT: This form should only be used when an offer of temporary custody has been received as the result of another prosecutor's request for disposition of a detainer. If the offer has been received because a prisoner has initiated the request, use Form 7 to accept such an offer. Copies of Form 8 should be sent to the Warden, the prisoner, the other jurisdictions in your State listed in the offer of temporary custody and the Agreement Administrator of the State which has the prisoner incarcerated. Copy should be retained by the person filing the acceptance and the judge who signs it.

Agreement on Detainers: Form VIII

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH ANOTHER PROSECUTOR'S REQUEST FOR DISPOSITION OF A DETAINER.

TO: _____ _____
(Warden, Superintendent, Director) (Institution)

_____
(Address)

According to your letter of _____ _____
(Date) (Name of Prisoner)
being returned to this State at the request of _____
(Title of Prosecuting
_____ of _____.
Officer) (Jurisdiction)
I hereby accept your offer of temporary custody of _____
(Name of Prisoner)
who also is under indictment, information or complaint in the _____
_____ of which I am the _____
(Jurisdiction) (Title of Prosecuting Officer)
I plan to bring this person to trial on said indictment, information or complaint within the time specified in Article IV(c) of the Agreement on Detainers.

COMMENTS: (Use the space below to make inquiry as to order in which your jurisdiction will receive custody or to inform the Warden of arrangements you have already made with other jurisdictions in your State in this regard.)

Signed: _____

Title: _____

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the agreement on Detainers.

DATED: _____ SIGNED: _____
(Judge)

_____
(Court)

FORM 867-IX

Revised
1/15/88

STATE OF NEW JERSEY
DEPARTMENT OF CORRECTIONS

Agreement on Detainers: Form IX

Five copies: One copy to be retained by the prosecutor; one copy sent to the warden of the state of original imprisonment, one copy to be sent to the compact administrator of the state of original imprisonment, one copy to be sent to the warden or agency who will have jurisdiction over the prisoner when he returns to the state which placed the detainer to serve his new sentence. One copy to the Agreement Administrator in the receiving state.

PROSECUTOR'S REPORT ON DISPOSITION OF CHARGES

TO: _____ _____
(Superintendent) (Date)

_____
(Name of Institution in which the Prisoner was originally imprisoned)

_____
(Street Address)

_____ _____ _____
(City) (State) (Zip Code)

_____ _____
(Name of Inmate) (Number)

was transferred to the State of _____ pursuant to the
(Name of State)

Interstate Agreement on Detainers for trial based on the pending charge or charges contained in the Agreement on Detainers, Form II (if transfer was at the request of inmate) or in Forms IV and V (if transfer was at request of the prosecutor).

The disposition of the pending charge or charges in this jurisdiction was as follows:

Disposition: _____

_____

_____

_____
Prosecuting Officer

_____
Jurisdiciton

GUIDELINES FOR PROSECUTING ATTORNEYS

IX. Guidelines for Prosecuting Attorneys

There are three basic situations in which the IAD will be utilized by prosecuting attorneys with detainers based on pending charges against an inmate who is incarcerated out of state:

A. Prisoner initiates request for speedy disposition of the detainer through the superintendent of the institution where he or she is incarcerated;

B. Prosecutor requests temporary custody of the inmate in order to bring the matter to trial; or

C. A prosecuting attorney in the receiving state requests temporary custody for charges in that jurisdiction, and prosecutors in other jurisdictions of the receiving state wish to join in the request for charges pending in their jurisdictions.

PROCEDURES FOR SITUATION A: Prisoner Requests Speedy Disposition.

1. Prosecutor receives Form 2: "Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Informations or Complaints"; Form 3: "Certificate of Inmate Status"; and Form 4: "Offer to Deliver Temporary

Custody"; from the superintendent of the institution where the inmate is incarcerated. These forms will arrive via certified mail, return receipt requested.

2. The prisoner must be brought to trial within 180 days from the date the prosecutor receives Form 2, unless reasonable continuances are obtained from the court where charges are pending. Failure to obey this time limit may result in dismissal of the charges with prejudice.

3. Upon receipt of Forms 2, 3 and 4, the prosecuting attorney must prepare four copies of:

   Form 6: "Evidence of Agent's Authority to Act for the Receiving State"; and

   Form 7: "Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer. Distribute Form 7 as noted on the form.

All copies of Form 6 must be sent to the Compact Administrator in the receiving state. After signing, the Administrator will distribute the copies as required. The prosecutor will then give one copy to the transporting agent for

use in establishing his or her authority to take temporary custody of the inmate.

4. Arrangements must be made for delivery of the inmate from the custody of the institution in the sending state to the custody of the receiving state transporting agent. When the transporting agent arrives at the institution in the sending state to take custody of the inmate, he or she must produce:

   a. Forms 4 and 6; as well as

   b. a duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for speedy disposition of the detainer has been made; and

   c. identification of status of agent.

5. At the conclusion of trial, the prosecuting attorney must complete:

   Form 9: "Prosecutor's Report on Disposition of Trial"

6. The prosecutor must return the prisoner to the sending state at the earliest possible time following trial

including sentencing. It is important to make arrangements in advance with the institution in the sending state, so that correctional officials there can be prepared for the inmate's arrival.

NOTE ON EXTRADITION: A prisoner-initiated request for speedy disposition operates as a waiver of extradition. There is no need to wait for a judicial hearing in the sending state before transporting the inmate to the receiving state. The major procedural protection to be wary of is the 180-day time limit on commencing trial. Unlike the prosecutor-initiated request, where the trial must commence within 120 days of the inmate's arrival in the receiving state, when the prisoner initiates the speedy trial request, trial must commence within 180 days from the date the prosecutor receives Form 2.

NOTE ON CHARGES IN MULTIPLE JURISDICTIONS OF RECEIVING STATE: If prisoner who is incarcerated in the sending state requests speedy disposition of a detainer filed by a prosecutor in jurisdiction X, and there is another detainer on that inmate from a prosecutor in jurisdiction Y (jurisdictions X and Y are both in the receiving state), the institution will notify the prosecutors in both X and Y of the situation, by properly filling out Forms 3 and 4. Prosecutor X will proceed as usual. Prosecutor Y must fill out Form 7: "Prosecutor's

Acceptance of Temporary Custody Offered in Connection With a Prisoner's Request for disposition of a Detainer," and send four copies to the Compact Administrator in the receiving state. Prosecutor Y does not prepare Form 6, because the agent from jurisdiction X will be transporting the inmate.

Prosecutors X and Y must coordinate trial schedules and transportation so that charges against the inmate can be expeditiously resolved in both jurisdictions. Both prosecutors have a duty to keep the institution in the sending state informed as to the inmate's status and whereabouts in the receiving state. Both prosecutors must complete Form 9, and the prisoner must be returned to the sending state at the earliest possible time after trials are finished in jurisdiction X and Y.

PROCEDURES FOR SITUATION B: Prosecutor Requests Temporary Custody

1. Prosecutor prepares copies of Form 5: "Request for Temporary Custody"

   a. All copies of Form 5 must be signed by a judge of the court having jurisdiction over the complaint, indictment or information upon which the detainer is based

i. the judge must approve, record and transmit the "Request for Temporary Custody"

b. The copies are distributed among:

i. Judge who signs the Request;

ii. Prosecutor who files the Request;

iii. Agreement Administrators in both the sending and receiving states;

iv. The prisoner whose temporary custody is sought; and

v. The superintendent of the institution where the inmate is incarcerated.

c. If the prosecuting attorney's jurisdiction is located in a state covered by the United States Court of Appeals for the Ninth Circuit, there must be an approval of the Form 5 request by the Governor of the receiving state. See, Hudson v. Moran, 760 F.2d 1027 (9th Cir. 1985).

2. Prosecutor receives Form 3: "Certificate of Inmate Status": from the institution where the inmate is incarcerated in the sending state.

3. Assuming that the Cuyler v. Adams hearing has been waived, approximately thirty (30) days after the Form 5 has been received by officials in the sending state, the prosecutor will receive Form 4: "Offer to Deliver Temporary Custody", from the institution where the inmate is residing. The prosecutor should assume that receipt of Form 4 means the inmate is available for transport. Upon receipt of Form 4, the prosecuting attorney should contact the institution where the prisoner is located, and verify that the pre-transfer hearing under Cuyler v. Adams, 449 U.S. 433 (1981) has been held or waived. Until a pre-transfer hearing is successfully completed or waived in the sending state, the inmate is not available for transport to the receiving state.

4. As soon as Form 4 is received by the prosecuting attorney, he or she should begin preparation of Form 6: "Evidence of Agent's Authority to Act for Receiving State"

   a. All copies must be prepared, and sent to the Agreement Administrator in the receiving state.

b. After signing all copies, the Administrator retains one; sends one to the sending state's Administrator, one to the superintendent of the sending state's institution where the inmate is located; and returns two copies to the prosecutor.

c. The prosecutor keeps one copy, and gives the other to the transporting agent.

5. When the prosecutor receives word from authorities in the sending state that the Cuyler v. Adams hearing has been waived or completed in favor of transfer, arrangements should be made with officials at the institution for the agent to transport the inmate to the receiving state. When the transporting agent arrives at the institution to take custody of the inmate, he or she must produce:

a. Forms 4 and 6; and

b. a duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the inmate has been made.

It would also be prudent for the receiving state's agent to obtain a copy of the court order allowing the inmate

to be transported, from the Cuyler v. Adams hearing. Likewise, it would be appropriate to obtain a copy of the inmate's waiver of extradition, if one was executed in lieu of a Cuyler v. Adams hearing. In this way, if the inmate files a civil rights action while in the receiving state, or otherwise challenges transfer of custody and disposition of charges as a result of IAD proceedings, the prosecutor will already have a copy of the critical documentation from the court in the sending state.

6. The inmate must be brought to trial within 120 days of his or her arrival in the receiving state, unless reasonable continuances are granted by the court having jurisdiction of the pending charges. Failure to comply with the 120 day time limit may result in dismissal of the charges with prejudice.

7. At the conclusion of trial, the prosecuting attorney must complete:

   Form 9: "Prosecutor's Report on Disposition of Trial"

8. The prosecuting attorney must return the prisoner to the sending state at the earliest possible time following trial. It is important to make arrangements in advance with the institution in the sending state, so that

correctional officials there can be prepared for the inmate's return.

PROCEDURES FOR SITUATION C: Prosecuting Attorney in Another Jurisdiction in the Receiving State Requests Temporary Custody

To explain procedures for this situation, two hypothetical prosecutors will be described: a prosecutor in jurisdiction X ("prosecutor X") and a prosecutor in jurisdiction Y ("prosecutor Y"). Both jurisdictions are located within the same state ("receiving state").

1. Prosecutors X and Y have both filed detainers against an inmate who is incarcerated in the sending state.

2. Prosecutor X sends Form 5: "Request for Temporary Custody"; Prosecutor Y does not.

3. The institution where the inmate is located sends Form 3: "Certificate of Inmate Status" to both Prosecutors X and Y. By way of Form 3, Prosecutor X is notified that there is a detainer on this inmate in jurisdiction Y, and vice versa.

4. While Prosecutor X follows the normal procedure for obtaining temporary custody of the inmate, Prosecutor Y

must prepare **Form 8**: "Prosecutor's Acceptance of Temporary Custody Offered in Connection with Another Prosecutor's Request for Disposition of a Detainer."

a. This form is sent **after** Prosecutor Y receives the **Form 4**: "Offer to Deliver Temporary Custody" from the institution in the sending state where the prisoner is located.

b. Prosecutor Y does **not** complete **Form 6**: "Evidence of Agent's Authority to Act for Receiving State," because it is the agent from jurisdiction X who will take custody of and transport the inmate to the receiving state.

5. Prosecutors X and Y must coordinate trial schedules and transportation so that the charges against the inmate can be expeditiously resolved in both jurisdictions. Both prosecutors have a duty to keep the institution in the sending state informed as to the inmate's status and whereabouts in the receiving state.

6. Both prosecutors must complete **Form 9**: "Prosecutor's Report on Disposition of Trial."

7. Arrangements must be made to return the inmate to the sending state's institution, when trials are finished in jurisdictions X and Y.

8. The prisoner must be returned to the sending state at the earliest possible time following trial.

The Commissioner of Corrections is the designated administrator for the Interstate Agreement on Detainers. All inquires pertaining to the agreement should be directed to:

DEBRA A. HANSON, Compact Administrator
Office of Interstate Services
New Jersey Department of Corrections
CN-863
Trenton, New Jersey 08625

Attn: Rise Dawson
Supervisor of Fugitive/IAD Unit

609-292-1062

EXPUNGEMENTS

Senior Assistant Prosecutor Steven E. Braun
Passaic County Prosecutor's Office

I. General Information

The New Jersey expungement procedure is set forth in N.J.S.A. 2C:52-1 et seq. An expungement is defined as the extraction and isolation of records on file with the Courts, police departments and state agencies of New Jersey which deal with arrests, convictions, and the various dispositions of offenses. As opposed to the former Title 2A procedures, Title 2C procedures allow for an expungement to erase not only a conviction, but also the underlying arrest. However, Chapter 52 does allow limited use of the records for bail hearings, pre-sentence reports, sentencing, parole boards, The Violent Crimes Compensation Board, the Department of Corrections and by Order of the Superior Court for good cause shown. The assistant prosecutor whose duties include expungement processing must be thoroughly familiar with the statutory requirements because, according to N.J.S.A. 2C:52-24, it is the obligation of the county prosecutor of the county in which an expungement matter is heard to verify the accuracy of the allegations of the petition for expungement and to bring to the Court's attention any facts which may be a bar to, or which may make inappropriate the granting of, such relief.

II. Legal Requirements

The legal requirements for the expungement of indictable offenses are defined in N.J.S.A. 2C:52-2. Provided the petitioner for the expungement of a New Jersey crime has not been convicted of any prior or subsequent crime (either in New Jersey or another jurisdiction) to the one he seeks to have expunged and has not been adjudged a disorderly person or petty disorderly person on more than two occasions, he may be eligible for an expungement. If a petitioner has two or less disorderly persons or petty disorderly persons convictions, he is not automatically barred from receiving an expungement as is the case when he has more than two. Nonetheless, he may be denied the expungement he seeks if the Court hearing the matter finds either offense or both constitute a continuation of the type of unlawful activity embodied in the criminal conviction for which expungement is sought. In addition, certain convictions for crimes cannot be expunged. These include the following former pre-New Jersey Code of Criminal Justice offenses: murder, manslaughter, treason, anarchy, kidnapping, rape, forcible sodomy, arson, perjury, false swearing, robbery, embracery, a conspiracy or attempt to commit the foregoing and aiding, assisting, or concealing persons accused of the foregoing crimes. Convictions for the following New Jersey Code of Criminal Justice crimes cannot be expunged: N.J.S.A. 2C:11-1 et seq. (criminal homicide), except death by auto as specified in N.J.S.A. 2C:11-5; N.J.S.A. 2C:31-1 (kidnapping); N.J.S.A. 2C:14-2 (aggravated sexual assault); N.J.S.A. 2C:15-1 (robbery); N.J.S.A. 2C:17-1 (arson and related offenses); N.J.S.A.

2C:28-1 (perjury); N.J.S.A. 2C:28-2 (false swearing), and conspiracies or attempts to commit such crimes. Expungements may not be sought for convictions for the sale or distribution of controlled dangerous substances, or the possession thereof with the intent to sell, unless the crimes only involved 25 grams or less of marijuana or five grams or less of hashish. A person desiring expungement of an indictable offense generally is not eligible for the expungement until ten (10) years have passed from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later. However, an exception exists under N.J.S.A. 2C:52-5 for a person convicted of the possession of a controlled dangerous substance, or the sale, distribution, or possession with the intent to sell of 25 grams or less of marijuana or five grams or less of hashish, when the person was 21 years old or younger at the time of the crime. In this situation, rather than having to wait ten years, the prospective petitioner need only wait one (1) year following conviction, termination of probation or parole, or discharge from custody, whichever is later. In addition, relief will only be granted pursuant to N.J.S.A. 2C:52-5 if the prospective petitioner has not, prior to the time of hearing, violated any of the conditions of his probation or parole, albeit subsequent to discharge from probation or parole, has not been convicted of any previous or subsequent criminal act or violation of Title 24, N.J.S.A. 2A:170-77.5, or N.J.S.A. 2A:170-77.8, or who has not had a prior or subsequent criminal matter dismissed

because of acceptance into a supervisory treatment or other diversion program.

The expungement of petty disorderly persons and disorderly persons offenses is addressed in N.J.S.A. 2C:52-3. According to the statute, a person is eligible provided he has not been convicted of any prior or subsequent crime (either in New Jersey or any other jurisdiction) or of another three disorderly persons or petty disorderly persons offenses. The Supreme Court has ruled in State v. A.N.J. III, 98 N.J. 421 (1985) that one may have up to three disorderly persons or petty disorderly persons convictions expunged. The general rule is that a five (5) year period must pass from the date of conviction, payment of fine, satisfactory completion of probation, or release from incarceration, whichever is later, before a person seeking expungement of a disorderly persons or a petty disorderly persons offense is eligible. However, once again, N.J.S.A. 2C:52-5 provides that a person who was 21 years old or younger at the time of the offense may seek expungement after one (1) year following conviction, termination of probation or parole, or discharge from custody, whichever is later, under certain circumstances. In order to be eligible the prospective petitioner had to have been convicted of possession or use of a controlled dangerous substance, N.J.S.A. 2A:170-77.5, or N.J.S.A. 2A:170-77.8. Relief may only be granted pursuant to N.J.S.A. 2C:52-5 provided the prospective petitioner has not, prior to the time of the hearing, violated any of the conditions of his probation or parole, albeit subsequent to discharge from probation or parole, has not been convicted of any previous or

subsequent criminal act or any subsequent or previous violation of Title 24, N.J.S.A. 2A:170-77.5, or N.J.S.A. 2A:170-77.8, or who has not had a prior or subsequent criminal matter dismissed because of acceptance into a supervisory or other diversion program.

Convictions for the violation of municipal ordinances may be expunged pursuant to N.J.S.A. 2C:52-4. In order to be eligible, the person seeking expungement must not have been convicted of any prior or subsequent crime (in New Jersey or another jurisdiction) and must not have been convicted of a disorderly persons or petty disorderly persons offense on more than two occasions. Two (2) years must pass from the date of conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later, before a person is eligible.

Arrests not resulting in conviction are expunged pursuant to N.J.S.A. 2C:52-6. A person who receives a dismissal, discharge, or acquittal based upon a determination of insanity or lack of mental capacity may not have his arrest expunged. A person who has had charges dismissed pursuant to N.J.S.A. 24:21-27 or a program of supervisory treatment may not have his arrest record expunged until six months after the entry of the Order of Dismissal. Otherwise, any petitioner who was acquitted, or who was discharged without a conviction, may at any time following the disposition of proceedings seek expungement of the arrest.

Juvenile delinquency expungements are governed by N.J.S.A. 2C:52-4.1. This statute says that an act committed by a juvenile, resulting in the sustaining of charges, is expunged pursuant to

the expungement statute which would be applicable for the adult equivalent. Thus, a juvenile, for example, who had committed a burglary, an adult indictable offense, would seek expungement pursuant to the requirements of N.J.S.A. 2C:52-2, the section which governs the expungement of adult indictable offenses. When a person charged with delinquency has had the charges against him dismissed, the filing of those charges may be expunged pursuant to N.J.S.A. 2C:52-6, the statute dealing with arrest not resulting in conviction. Finally, a person adjudged a juvenile delinquent may have his entire record expunged if: (1) five years have elapsed since the final discharge of the person from legal custody or supervision, or five years have elapsed after the entry of any other Court Order not involving custody of a crime, or a disorderly persons or petty disorderly persons offense, or adjudged a delinquent, or in need of supervision, during the five years prior to the filing of the petition, and no proceeding or complaint is pending seeking such conviction or adjudication, (3) the person was never adjudicated a juvenile delinquent on the basis of an act which would constitute one of the acts not subject to expungement pursuant to N.J.S.A. 2C:52-2 (i.e., murder, manslaughter, etc.), (4) the person never had an adult conviction expunged, and (5) the person has never had adult charges dismissed following completion of a supervisory treatment or other diversion program.

N.J.S.A. 2C:52-28 expressly makes arrests and convictions for Title 39 motor vehicle offenses not subject to expungement under Chapter 52.

Expungements will be denied if there are any statutory grounds to justify such denial, even if the statutory grounds are not contained within Chapter 52. N.J.S.A. 2C:52-14 also states an expungement will be denied if the need for the availability of the records outweighs the desirability of having a person freed from the disabilities stemming from his record. However, for an application to be denied on these grounds, one of the parties given notice pursuant to N.J.S.A. 2C:52-10 (see Section III, Procedural Requirements) must object, and the objector has the burden of asserting the grounds. When an acquittal, discharge, or dismissal of charges (in connection with N.J.S.A. 2C:52-6, arrests not resulting in conviction), resulted from a plea bargain involving the conviction of other charges, the arrests will not be expunged until the conviction itself is expunged. No arrest or conviction will be expunged if, at the time of the hearing, it is the subject matter of civil litigation between the petitioner, or his legal representative, and the State, any governmental entity thereof, or any state agency and the representatives or employees of such body. No one who has had a previous criminal conviction expunged may have another matter expunged except when the new matter is a municipal ordinance violation or an arrest not resulting in conviction pursuant to N.J.S.A. 2C:52-6. Finally, a person seeking expungement of a disorderly persons offense, petty disorderly persons offense, or crime may not receive that expungement if prior to or subsequent to that conviction, he has been granted the dismissal of criminal charges following completion of a supervisory treatment or other diversion program.

III. Procedural Requirements

Expungements are initiated by the filing of a verified petition and accompanying statement. The documents are filed in the Superior Court of the county in which the subject matter of the expungement occurred. The petition must include, according to N.J.S.A. 2C:52-7, the following: (1) petitioner's date of birth, (2) petitioner's date of arrest, (3) statute(s) and offenses(s) for which petitioner was arrested and of which he was convicted, (4) the original indictment, summons, or complaint number, (5) date of conviction or disposition of the matter if no conviction resulted, and (6) the Court's disposition of the matter and punishment imposed, if any. According to State v. DeMarco, 174 N.J. Super. 411 (Law Div. 1980), the entire record of convictions and all arrests, including those not resulting in conviction, must be set forth. Attached to the petition must be a statement with the affidavit or verification that there are no disorderly persons, petty disorderly persons, or criminal charges pending against the petitioner at the time of filing of the petition for expungement (N.J.S.A. 2C:52-8). When a petitioner is seeking the expungement of a crime, it is necessary to attach a statement to the petition, with affidavit or verification, that he has never been granted an expungement, sealing, or similar relief regarding a criminal conviction by any court of New Jersey, other state, or the United States. When a petitioner has received a dismissal of a criminal charge because of acceptance into a supervisory treatment or any other diversion program, a statement with affidavit or verification setting forth the nature of the original

charge, the Court of disposition, and date of disposition, must be included.

The verified petition and appropriate statement(s) once filed with the Superior Court, must be sent along with an Order Fixing Time for Hearing to the parties listed in N.J.S.A. 2C:52-10 so that in the event any of the parties have objections, that party can properly note them. The appropriate parties consist of: (1) the Superintendent of the State Police, (2) the Attorney General, (3) the Prosecutor of the county in which expungement is sought, (4) the chief of police or other head of the police department of the municipality in which the matter took place, (5) the municipal court, if a disposition was made by such, (6) the head of any law enforcement agency which participated in the arrest, and (7) the superintendent or warden of any institution in which petitioner was confined.

Preferences vary throughout the state according to county and judge as to whether a hearing is always necessary, and as to what transpires when a hearing does take place. N.J.S.A. 2C:52-11 permits a Court to enter an Order of Expungement without a hearing when none of the parties required to be noticed pursuant to N.J.S.A. 2C:52-10 object and there are no apparent bars to relief as provided by N.J.S.A. 2C:52-14. Conversely, even when no objections are entered, the Court may deny relief pursuant to N.J.S.A. 2C:52-12 if it finds grounds under N.J.S.A. 2C:52-14. The assistant prosecutor handling expungements should get a letter from the State Police as to whether the agency has objections. Often the other notified agencies will not correspond with the

Prosecutor's Office unless they have an objection. No matter, since the County Prosecutor is ultimately responsible for the integrity of the proceeding, the assistant prosecutor in charge of expungements should order his own record check from the county identification bureau so that he may verify the accuracy of the verified petition and statement(s).

Even should a particular Court not require it, the assistant prosecutor handling expungements should insist upon having proof of mailing from petitioner's counsel that the Order Fixing Time for Hearing, verified petition, and accompanying statement(s) were sent to the appropriate parties. In addition, once an Order for Expungement is signed by the Court, petitioner's counsel should file with the Court (the assistant prosecutor should receive a copy) proof of mailing that the Order of Expungement was sent to the appropriate parties. A copy of a model Order of Expungement is included. If it is not automatically done by the Court, counsel for the petitioner should be advised to file the original Order of Expungement with the County Clerk and obtain immediately a certified copy. The State Police insists on a certified copy, and this copy has to be obtained immediately because once the Order is filed in the county records, the County Clerk's Office will no longer release information concerning the fact that an expungement occurred.

A controversial case which all assistant prosecutors dealing with expungements should be familiar with is State v. R.G.W., 208 N.J. Super. 60 (App. Div. 1986). The Appellate Division held that when a petitioner seeks the expungement of a record, and the

offense which the petitioner is seeking to have expunged was an indictable conviction, but the law has been changed so that the same offense would now be a disorderly person's offense, the expungement statute dealing with disorderly persons convictions governs. Thus, a petitioner would only have to wait five years rather than ten years. The Attorney General's Office feels R.G.W. was wrongly decided and may eventually seek a case to challenge this holding.

INTERSTATE RECIPROCAL WITNESS COMPACT

Prosecutor Larry J. McClure
Bergen County Prosecutor's Office

The Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings is codified in New Jersey at N.J.S.A. 2A:81-18 to 81-21. It makes it possible to compel the appearance of out of states witnesses at criminal proceedings within New Jersey. The purpose of the Act is to assist States in the orderly and effective administration and prosecution of criminal cases. It was enacted in aid of comity between States and should be construed liberally to achieve these aims. Matter of State Grand Jury Investigation into Corruption in Lindenwold New Jersey Area, 136 N.J. Super. 163 (App. Div. 1975). The constitutionality of the Uniform Act has long been established. New York v. O'Neill, 359 U.S. 1, 79 S.Ct. 564, 3 L.Ed. 2d 585 (1958).

The Act has been adopted by all 50 States as well as by the District of Columbia, Puerto Rico and the Virgin Islands. Its only jurisdictional prerequisite is that a "criminal" proceeding exist. This may be a grand jury investigation or a criminal trial. The Act does not lend itself to a disorderly persons offense.

When a witness from out of State is needed to testify in New Jersey, the Act requires the requesting party to secure a certification of a Judge, stating that the prospective witness is a necessary and material witness for a pending grand jury proceeding

or criminal trial. It should delineate in brief fashion the specific reasons that this witness' testimony is material and necessary. The certification should also state that the witness will be immune from civil and criminal process while in New Jersey as to any matter which arose before their entrance into our State and is further immune from process in any State through which they are required to pass while traveling here. This certification must then be exemplified by the County Clerk's Office which established that the certifying court is a court of record in New Jersey.

The exemplified certification of the Judge should then be forwarded to the Prosecutor or District Attorney in the jurisdiction where the witness resides along with a few other papers prepared by the Assistant Prosecutor requesting the witness. These papers include a petition from the Assistant Prosecutor briefly setting forth why the witness is necessary and material, and that the witness will be immune from both civil and criminal process while in New Jersey. It should also guarantee that the statutory fees and all reasonable and necessary expenses which the prospective witness may incur in connection with their appearance here will be paid for. The Assistant Prosecutor should also draw up proposed orders for the order to show cause hearing which will take place in the foreign jurisdiction. A final order compelling the witness to come to New Jersey to testify should also be enclosed.

The summons of out of State witnesses by this Act is equivalent to both the subpoena ad testification and subpoena duces

tecum. In re Subpoena Duces Tecum Served on the Custodian of Records of Institutional Management Corp. 137 N.J. Super. 208 (App. Div. 1975). Thus with very slight modification, the sample forms which follow can serve to bring in before the grand jury or a criminal trial court any business records or other evidence which might be needed in the presentation of a case.

It should also be noted that the Uniform Act may be employed by the defense as well as the prosecution. State v. Smith, 87 N.J. Super. 98 (App. Div. 1965). In either case the responsibility for handling the proceedings will rest with the party making the request. The following checklist should be used when preparing applications for the attendance of material witnesses from out of State to ensure that the statute has been fully complied with:

1. Obtain full address of witness. Be sure name of witness is listed in discovery material.

2. Arrange with court for case to be set down peremptorily.

3. Contact Prosecutor or District Attorney in jurisdiction in which witness resides.

4. Prepare necessary pleadings both for New Jersey and the foreign jurisdiction. (If books and records, etc. are required, this fact must be stated clearly in pleadings).

5. Draw certified check for mileage (both ways) and statutory payment of $5.00 per day for the witness.

6. After the local judge has signed certification, have county clerk certify and exemplify copies of petition and certification and if there is an indictment, have that made part of the package.

7. File original petition and certification with local county clerk.

8. Mail 6 copies of all documents (certified package) to Prosecutor or District Attorney in foreign

jurisdiction. (Advise him by telephone prior to your mailing of documents).

9. Be sure to inquire of District Attorney or Prosecutor in foreign jurisdiction whether they will handle the matter for you on the return date of the order to show cause in the foreign jurisdiction.

10. Make arrangements for transportation of witness if necessary.

11. Make arrangements for hotel accommodations and meals for witness while witness is in this State.

The package to the sending state's prosecutor should include:

1. Cover letter
2. Petition of County Assistant Prosecutor reciting that named person to be a Material Witness.
3. Certificate of Judge adjudging named person to be a Material Witness.
4. Exemplification Sheet (obtained from County Clerk).
5. Petition for Issuance of Order to Show Cause for foreign jurisdiction.
6. Order to Show Cause for foreign jurisdiction.
7. Final Order compelling the appearance of named person.
8. Issued check.

In the pages which follow, you will find the sample forms needed to comply with the Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings as codified in N.J.S.A. 2A:81-18 to 81-21.

TABLE OF CONTENTS FOR OUT

OF STATE WITNESS FORMS

Office of the County Prosecutor

County of Bergen

HACKENSACK, NEW JERSEY 07601

(201) 646-2300

LARRY J. MCCLURE
COUNTY PROSECUTOR

DENNIS CALO
FIRST ASSISTANT PROSECUTOR

CONO DELIA
CHIEF OF DETECTIVES

May 5, 1988

Inspector David J. Best
Office of the State's Attorney
101 Lafayette Street
Hartford, CT 06106

Re: State of New Jersey v. Carlos Olivera Pagon
Indictment No. S-940-87
Witnesses Julissa Olivera & Anna Ramirez

Dear Inspector Best:

Per our telephone conversations, I enclose two sets of the necessary materials to subpoena witnesses Julissa Olivera and Anna Ramirez. Please note that the checks in payment of the witness fees are also enclosed.

While I am afraid I don't have a card to enclose, my direct telephone is (201) 646-2392 and my address is above. I thank you very much for the help you have given us in this case. If I can ever be of assistance to you in this jurisdiction, please do not hesitate to contact me.

Very truly yours,

Fred L. Schwanwede

FRED L. SCHWANWEDE
Assistant Prosecutor

jc
Enc

LARRY J. McCLURE
BERGEN COUNTY PROSECUTOR
BERGEN COUNTY COURTHOUSE
HACKENSACK, NEW JERSEY 07601
(201) 646-2300

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
INDICTMENT NO. S-940-87

STATE OF NEW JERSEY :

vs. : PETITION

CARLOS OLIVERA PAGON :

:

STATE OF NEW JERSEY)
:ss.
COUNTY OF BERGEN)

The undersigned Assistant Prosecutor of the County of Bergen, being duly sworn according to law, upon his oath deposes and says:

1. I am an Assistant Prosecutor assigned to the above entitled criminal case and am familiar with the facts and circumstances herein.

2. There is now pending before the Superior Court of the State of New Jersey, Honorable Alfred D. Schiaffo, the above entitled indictment containing three counts. The trial of said matter is scheduled to commence on May 23, 1988.

3. It is necessary to secure the attendance in New Jersey of Anna Ramirez, 54 Norwich Street, Hartford, Connecticut, for the purpose of providing testimony in the said trial now pending before the Superior Court of the State of New Jersey.

4. Anna Ramirez, the said witness, is a necessary and material witness for the State of New Jersey in said trial by reason of fact that she is the mother of the juvenile victim and the "fresh complaint" witness in the above matter.

5. The aforementioned criminal matter is scheduled for trial before the Superior Court of New Jersey, Honorable Alfred D. Schiaffo at 9:00 in the forenoon on May 23, 1988, in the Bergen County Courthouse, in the City of Hackensack, State of New Jersey.

6. Should the said witness, Anna Ramirez, come into the State of New Jersey in obedience to a summons or order directing him to attend and give testimony before the Superior Court, the laws of the State of New Jersey and/or any other state through which said witness may be required to pass by the ordinary course of travel to attend said Superior Court, give him protection from arrest or service of process, civil or criminal, in connection with matters which arose before his entrance into said state, pursuant to said summons or order.

WHEREFORE, it is requested for and on behalf of the State of New Jersey that Your Honor certify to the above and foregoing by the issuance of a certificate thereto under the seal of the Superior Court of New Jersey, Law Division (criminal) for the County of Bergen, for the purposes of being presented to a judge of a court of record in the State of Connecticut her in a proceeding to compel the attendance of said Anna Ramirez as a witness at said criminal trial for the time, day and date set forth herein above and pursuant to law.

Fred L. Schwanwede

FRED L. SCHWANWEDE
Assistant Prosecutor

Sworn and subscribed to
before me this 9th day
of May. 1988

Ralph Lubow

Attorney-at-Law
State of New Jersey

P.O.1136-87
/iy
8/14/87
SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY - LAW DIVISION
JULY TERM A.D. 1987
FIRST STATED SESSION

THE STATE OF NEW JERSEY :

-vs- :

:

: Indictment No.

CARLOS OLIVERA PAGON : S-940-87

:

DEFENDANT

The Grand Jurors of the State of New Jersey, for the County of Bergen, upon their oaths present as a

FIRST COUNT

that CARLOS OLIVERA PAGON, on divers dates or about during and between December 18, 1986 to April 17, 1987, in the City of Hackensack, in the County of Bergen aforesaid, and within the jurisdiction of this Court, did commit aggravated sexual assault upon J.O., date of birth July 15, 1971, by performing an act of sexual penetration, to wit: vaginal intercourse upon the victim, the victim being at least thirteen, but less than sixteen years of age at the time and the actor being related to the victim by blood or affinity to the third degree; contrary to the provisions of NJS 2C:14-2a(2)(a), and against the peace of this State, the Government and dignity of the same.

SECOND COUNT

AND the Grand Jurors aforesaid, upon their oaths aforesaid, do further PRESENT that CARLOS OLIVERA PAGON on divers dates or

about during and between May 10, 1987 and May 28, 1987 in the Borough of Lodi, in the County of Bergen aforesaid, and within the jurisdiction of this Court, believing that an official proceeding or investigation was pending or about to be instituted, did knowingly attempt to induce or otherwise cause J.O. date of birth July 15, 1971, to withhold testimony or information or absent herself from a proceeding to which she h been legally summoned; contrary to the provisions of NJS 2C:28-5(a), and against the peace of this State, the Government and dignity of the same.

THIRD COUNT

AND the Grand Jurors aforesaid, upon their oaths aforesai do further PRESENT that CARLOS OLIVERA PAGON on or about durin and between December 18, 1986 and April 17, 1987 in the City o Hackensack, in the County of Bergen aforesaid, and within the jurisdiction of this Court, having a legal duty for the care o J.O. born July 15, 1971, did engage in sexual conduct which wo impair or debauch the morals of the said child; contrary to th provisions of NJS 2C:24-4(a), and against the peace of this State, the Government and dignity of the same.

LARRY J. McCLURE
COUNTY PROSECUTOR

By: Assistant Prosecutor

A True Bill

Kathleen T. Sandor, Foreperson

LARRY J. McCLURE
BERGEN COUNTY PROSECUTOR
BERGEN COUNTY COURTHOUSE
HACKENSACK, NEW JERSEY 07601

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
INDICTMENT NO. S-940-87

STATE OF NEW JERSEY :

vs. :

CARLOS OLIVERA PAGON :

CERTIFICATE OF JUDGE ADJUDGING NAMED PERSON TO BE A MATERIAL WITNESS

I, Charles R. DiGisi, Judge of the Superior Court of New Jersey, Law Division, Bergen County, a court of record, do hereby certify:

1. There is now pending before the Superior Court of New Jersey the above-entitled criminal trial.

2. The aforementioned criminal trial is scheduled for May 23, 1988 before the Honorable Alfred D. Schiaffo at 9:00 a.m. in the Bergen County Courthouse, in the City of Hackensack, State of New Jersey.

3. Anna Ramirez, the said witness, now being at 54 Norwich Street, Apt. 304, Hartford, Connecticut is a necessary and material witness for the State of New Jersey in such criminal trial by reason of the fact that Anna Ramirez is the mother of the victim and the "fresh complaint" witness in the above matter.

4. The presence of the said Anna Ramirez personally before the Superior Court, Honorable Alfred D. Schiaffo in said criminal trial for the purpose of giving testimony upon the part of the State off New Jersey, will be required on May 24, 1988.

5. Should the said Anna Ramirez as such witness, come into the State of New Jersey in obedience to a summons directing her to attend and testify at said criminal trial, the laws of the State of New Jersey and of any other state through which said witness may be required to pass by the ordinary course of travel to attend such criminal investigation, give her protection from arrest or the service of process upon her, civil or criminal, in connection with matters which arose before her entrance into said state, pursuant to said summons.

6. The State of Connecticut by its laws has made provisions for commanding persons within its borders to attend and testify at criminal proceedings in the State of New Jersey. C.G.S.A. Sec. 54-22.

7. This certificate is made for the purpose of being presented to a Judge of a Court of Record in the County of Hartford, State of Connecticut, by said Office of the State's attorney which is proceeding at the request of the Prosecutor of Bergen County, to compel said Anna Ramirez to attend and testify at the trial of the above matter before the Superior Court in the State of New Jersey on the day and date herein set forth: May 24, 1988.

WITNESS This Honorable Judge of the Superior Court, at Hackensack, New Jersey, this 9th day of May, 1988

HONORABLE CHARLES R. DiGISI
Judge of the Superior
Court of New Jersey

EXEMPLICATION

STATE OF NEW JERSEY)
:ss.
COUNTY OF BERGEN)

I, CARL R. HARTMANN, Clerk of the County of Bergen aforesaid, and also Deputy Clerk of the Superior Court of New Jersey holden therein, the s being a Court of Record with a seal, DO HEREBY CERTIFY the foregoing to be true and correct copy of the Certificate of Judge Adjudging Named Person to a Material Witness in the matter of State of New Jersey vs. Carlos Olivera Pagon, Indictment No. S-940-87.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of sai Court and County at Hackensack, New Jersey on this 9TH day of May 198

Carl R. Hartmann
CARL R. HARTMANN, County Clerk
Deputy Clerk of the Superior Court

Seal

by: L. P. Bauman, Dpty.

STATE OF NEW JERSEY)
:ss.
COUNTY OF BERGEN)

I, Charles R. DiGisi, Judge of the Superior Court of New Jersey, DO HEREBY CERTIFY that Carl R. Hartmann, whose name is subscribed to the preceding attestation, is the Clerk of said County of Bergen and also Deput Clerk of the Superior Court of New Jersey, holden therein, duly elected and sworn, and that full faith and credit are due to his official acts. I furt certify that the seal affixed to the said attestation is the seal of said Court and County and that the attestation thereof is in due form.

WITNESS my hand at Hackensack, New Jersey on this 9th day of Ma

HONORABLE CHARLES R. DiGISI
Judge of the Superior Court

STATE OF NEW JERSEY)
:ss.
COUNTY OF BERGEN)

I, CARL HARTMANN, Clerk of the County of Bergen, and also Deputy Clerk of the Superior Court of New Jersey, DO HEREBY CERTIFY that whose name is subscribed to the preceding certificate is a Judge the Superior Court of New Jersey, duly commissioned and sworn, and that the signature of said Judge to said certificate is genuine.

In Witness Whereof, I have hereunto set my hand and affixed the s of said Court and County this 9TH day of May 1988.

Carl R. Hartmann
CARL R. HARTMANN, County Clerk
Deputy Clerk of the Superior Court

Seal

by: L. P. Bauman, Dpty.

SUPERIOR COURT

COUNTY OF HARTFORD

IN THE MATTER OF THE APPLICATION OF THE STATE OF NEW JERSEY FOR AN ORDER REQUIRING THE APPEARANCE OF ANNA RAMIREZ AS A WITNESS BEFORE THE SUPERIOR COURT OF NEW JERSEY	PETITION FOR ISSUANCE OF ORDER TO SHOW CAUSE

The undersigned, an Assistant State's Attorney, respectfully petitions the Court as follows:

1. Petitioner is in receipt of a Petition and an exemplified copy of a Certificate of a Judge of a Court of Record of the State of New Jersey adjudicating Anna Ramirez, a material witness in a criminal trial now pending before the Superior Court of New Jersey. Said Petition and Certificate have been submitted under the "Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings." C.G.S.A. Sec. 54-22.

2. Said Petition and Certificate are attached hereto.

3. In accordance with the provisions of the above cited Uniform Act, your Petitioner seeks an Order to Show Cause directing the witness Anna Ramirez to appear before a Judge of the Superior Court, County of Hartford, to show cause why an Order should not be entered directing her to appear as a

material witness before the Superior Court of New Jersey, Honorable Alfred D. Schiaffo at the Bergen County Courthouse, Hackensack, New Jersey, on May 24, 1988 to give testimony by and for the State of New Jersey.

_____

Assistant State's Attorney

Date:

HARTFORD SUPERIOR COURT

IN THE MATTER OF THE APPLICATION OF THE STATE OF NEW JERSEY FOR AN ORDER REQUIRING THE APPEARANCE OF ANN RAMIREZ AS A WITNESS BEFORE THE SUPERIOR COURT OF NEW JERSEY	ORDER TO SHOW CAUSE MATERIAL WITNESS

TO: ANNA RAMIREZ
54 Norwich Street
Apt. 304
Hartford, CT

This matter being brought on before the Court by , Assistant State's Attorney, and whereas it appears that a Petition and Certificate naming Anna Ramirez as a witness in a trial pending before the Superior Court of New Jersey, Honorable Alfred D. Schiaffo, entitled State of New Jersey vs. Carlos Olivera Pagon have been filed with this Court, and good cause being shown;

You are hereby ordered to show cause on the day of 1988, at o'clock in the forenoon before the Honorable , Judge of the Superior Court why an order should not be signed by the said Judge of the said court ordering you to appear before the Superior Court of New Jersey, Honorable Alfred D. Schiaffo, as a material witness on the 24th day of May 1988 at the Bergen County Courthouse, Hackensack, New Jersey.

_____

Dated: _____

ORDERED that Check No. 3037, dated May 4, 1988, made payable to Anna Ramirez, in the sum of $30.00 be delivered to the said Anna Ramirez, for mileage at the rate of ten cents per mile from Hartford, Connecticut to Hackensack, New Jersey, and return, plus the required payment of $5 per day for one day of attendance.

_____

Dated: _____

HARTFORD SUPERIOR COURT

IN THE MATTER OF THE APPLICATION OF THE STATE OF NEW JERSEY FOR AN ORDER REQUIRING THE APPEARANCE OF ANNA RAMIREZ AS A WITNESS BEFORE THE SUPERIOR COURT OF NEW JERSEY.	ORDER

This matter having been presented to the Court by , in the presence of Anna Ramirez, the material witness named in the Certificate signed by the Honorable Charles R. DiGisi, Judge of the Superior Court of New Jersey, Law Division (Criminal), Bergen County, requesting that Anna Ramirez be ordered to appear as a necessary material witness for the State of New Jersey in the trial entitled State of New Jersey vs. Carlos Olivera Pagon, Indictment No. S-940-87, presently pending before the Superior Court of New Jersey;

IT IS, therefore, on this day of 1988,

ORDERED, pursuant to the provisions of the Uniform Act to Secure the Attendance of Witnesses From Without a State in a Criminal Proceeding, C.G.S.A. Sec. 54-22, that the said Anna Ramirez appear before the Superior Court of New Jersey, Honorable Alfred D. Schiaffo at the Bergen County Courthouse, Hackensack, New Jersey, on the 24th day of May 1988 at 9:00 a.m. forenoon; and it is further

ORDERED that Check No. 3037, dated May 4, 1988, made payable to Anna Ramirez, in the sum of $30.00 be delivered to the said Anna Ramirez, for mileage at the rate of ten cents per mile from Hartford, Connecticut to Hackensack, New Jersey, and return, plus the required payment of $5 per day for one day of attendance.

_____

Dated: _____

PAROLE ACT RESPONSIBILITIES

Atlantic County Prosecutor's Office
New Jersey Parole Board

A. PAROLE ACT AND PAROLE BOARD

The Parole Act of 1979, N.J.S.A. 30:4-123.45 to 123.69 (effective April 21, 1980), substantially changed the parole system in New Jersey. This Act repealed the Parole Act of 1948 (N.J.S.A. 30:4-123.1 to 123.44), and is implemented by Parole Board Regulations appearing at N.J.A.C. 10A:71-1 et. seq. The 1984 Act, however, still determines the parole eligibility date for inmates sentenced for pre-code offenses (for those offenses committed prior to September 1, 1979, the effective date of the Code of Criminal Justice). Otherwise, the procedures, standards and philosophy of the 1979 Act govern parole for all inmates.

A new State Parole Board was established by the Parole Act of 1979. N.J.S.A. 30:4-123.47. It is an administrative agency within the Department of Corrections, whose actions are reviewable in the Superior Court - Appellate Division, to ensure that its powers are not exercised arbitrarily or capriciously. In In Re Hawley, 98 N.J. 108 (1984), R. 2:2-3(a)(2). In addition to determining who should be released on parole status, the Board sets the conditions and rules to be followed by parolees and decides what action to take against parole violators.

B. RELEASE OF ADULT STATE INMATES

1. Standards and Procedures

The standards for determining parole eligibility under the 1979 Parole Act contrast sharply with the previous scheme. N.J. Parole Bd. v. Byrne, 93 N.J. 192, 204 (1983). The 1948 Act authorized parole only if the Board found "a reasonable probability" that the prisoner "will assume his proper and rightful place in society, without violation of the law, and that his release is not incompatible with the welfare of society." N.J.S.A. 30:4-123.14. However, in recognition of the more definite and severe sentences provided by the Criminal Justice Code, the 1979 Parole Act presumes that the punitive aspects of an inmate's sentence have been satisfied by the time a parole eligibility date arrives. N.J. Parole Bd. v. Byrne, supra at 205. Accordingly, the present law provides that a prisoner shall be released when parole eligible, unless it is demonstrated "by a preponderance of evidence that there is a substantial likelihood that the inmate will commit a crime under the laws of this State if released." N.J.S.A. 30:4-123.53(a). It is the State's burden to prove that the inmate is a recidivist who should not be released. Id.

Inmates sentenced for pre-Code offenses are not presumed to have fulfilled the punitive aspects of their sentence. When evaluating a parole eligible inmate sentenced under Title 2A, the Board, in addition to considering the substantial likelihood of future criminality, must also determine "whether the punitive aspects of a sentence have been satisfied in terms of the

rehabilitative potential of the inmate." In Re Trantino, 89 N.J. 347, 373 (1982). For those inmates who were convicted of Title 2A offenses and elected to be sentenced under the Code, the parole decision would be based solely on whether there is a substantive likelihood for repetition of criminal behavior. Thus, these "Code sentenced" inmates would be presumed to have received sufficient punishment. Id. at 369.

Notice of an inmate's consideration for parole must be given by the Parole Board at least 30 days prior to the release hearing. N.J.S.A. 30:4-123.45(b)(5). The lists of all inmates being considered for parole are forwarded to the prosecutor's office of each county, the sentencing court, the Attorney General, any other criminal justice agency whose information and comment may be relevant, and news organizations. Id. After receiving the notice of parole eligible inmates, the prosecutor may request a copy of any inmate's preparole report from the Board. N.J.S.A. 30:4-123.54(d).

The parole process commences when a hearing officer conducts an interview (initial hearing) with the inmate. N.J.S.A. 30:4-123.55(a), In Re Trantino Parole Application, 89 N.J. 347, 375 (1982). All parties provided with notice under N.J.S.A. 30:4-123.45(b)(5), including the prosecutor, can submit relevant information for consideration at this parole release hearing. At the conclusion of this interview, the hearing officer will complete a case assessment form which outlines his evaluation of the inmate's case. The hearing officer may either recommend parole release or refer the inmate's case for a panel hearing. If

parole is recommended, the matter is administratively reviewed by the Board which may concur with this decision and set a specific release date. If the recommendation is not accepted, the inmate's case is referred for a panel hearing.

If proceedings advance to the hearing stage, indicating a basis for denial of parole or the need for additional information, the matter will be heard by two Board panel members. N.J.S.A. 30:4-123.55(c). Because the Board's objective is to reach a reasoned and informed determination, the prosecutor and other interested parties should be allowed to submit evidence, give testimony, examine witnesses and present argument on relevant matters, subject to the discretion and control of the Parole Board. While the Board will consider the testimony of victims injured as a result of first or second degree offenses or nearest relatives of murder victims, it is the prosecutor's duty to notify each victim or relative at the time of sentencing of the opportunity to participate in parole proceedings. N.J.S.A. 30:4-123.54(b)(2), N.J.S.A. 30:4-123.55(c).

2. APPEALS

The prosecutor has the right and authority to appeal any decision of the State Parole Board granting parole to an inmate. In Re Hawley, 98 N.J. 108 (1984). On appeal, the prosecutor must establish by clear and convincing proof that the Parole Board abused its discretion. Id.

While the Board is not required to furnish a statement of reasons for its decision to release a prisoner, the public has a legitimate interest in a correct parole eligibility decision. In

Re Hawley, supra. Therefore, the State Parole Board should issue a statement of reasons for granting parole in those cases in which the prosecutor participates in the parole eligibility hearing, even though the Board is not required to do so. Id.

STATE PAROLE BOARD

PAROLE ELIGIBILITY TABLE

PENAL CODE SENTENCES (Title 2C) AND 2A FIRST OFFENDER CASES

A	B	C	D	E	F	G
Maximum Sentence	Flat Eligibility (Where no man.min.)	Commutation Credits (Note: Based on 1/3 of max minus jail credits	Estimated Work Credits (Maximum possible)	Estimated Minimum Custody Credits (Maximum possible)	Earliest Eligibility Includes: 1.No lost C.T. 2.Max. w.c. 3.Max. m.c.	Latest Eligibility Includes: 1.No lost C.T. 2.No w.c. 3.No m.c.
Years	yrs.-mos.	days	days	days	yrs.-mos.-days	yrs.-mos.-days
1	0 - 4	24	19	8	0 - 9 - 0*	0 - 9 - 0*
2	0 - 8	48	38	16	0 - 9 - 0*	0 - 9 - 0*
3	1 - 0	72	47	24	0 - 9 - 0*	0 - 9 - 20
4	1 - 4	100	58	29	0 - 9 - 24	1 - 0 - 22
5	1 - 8	128	72	36	1 - 0 - 6	1 - 3 - 23
6	2 - 0	156	85	47	1 - 2 - 10	1 - 6 - 27
7	2 - 4	188	98	58	1 - 4 - 18	1 - 10 - 25
8	2 - 8	220	112	69	1 - 6 - 23	2 - 0 - 23
9	3 - 0	252	124	79	1 - 8 - 25	2 - 3 - 21
10	3 - 4	284	138	92	1 - 11 - 8	2 - 6 - 21
11	3 - 8	316	159	48	2 - 2 - 26	2 - 9 - 19
12	4 - 0	348	173	59	2 - 4 - 25	3 - 0 - 17
13	4 - 4	380	186	70	2 - 7 - 4	3 - 3 - 17
14	4 - 8	412	198	81	2 - 9 - 20	3 - 6 - 16
15	5 - 0	444	210	91	2 - 11 - 8	3 - 9 - 13
16	5 - 4	476	231	52	3 - 2 - 27	4 - 0 - 11
17	5 - 8	508	249	63	3 - 5 - 10	4 - 3 - 10
18	6 - 0	540	258	71	3 - 6 - 1	4 - 6 - 8
19	6 - 4	572	270	81	3 - 9 - 11	4 - 9 - 7
20	6 - 8	604	285	93	3 - 11 - 18	5 - 0 - 6
21	7 - 0	636	308	52	4 - 3 - 14	5 - 3 - 4
22	7 - 4	676	319	61	4 - 5 - 6	5 - 5 - 24
23	7 - 8	716	330	71	4 - 6 - 3	5 - 8 - 14
24	8 - 0	756	342	81	4 - 9 - 1	5 - 11 - 4
25	8 - 4	796	358	89	5 - 7 - 25	6 - 1 - 25
26	8 - 8	836	374	47	5 - 2 - 14	6 - 4 - 15
27	9 - 0	876	392	62	5 - 5 - 15	6 - 7 - 6
28	9 - 4	916	397	67	5 - 6 - 3	6 - 9 - 26
29	9 - 8	956	409	77	5 - 8 - 13	7 - 0 - 17
30	10 - 0	996	421	87	5 - 10 - 11	7 - 3 - 9
35	11 - 8	1196	488	83	6 - 9 - 18	8 - 4 - 20
40	13 - 4	1412	550	134	7 - 7 - 24	9 - 5 - 18
45	15 - 0	1632	593	170	8 - 2 - 25	10 - 6 - 12
50	16 - 8	1852	660	226	9 - 2 - 8	11 - 7 - 14
55	18 - 4	2088	712	269	9 - 10 - 21	12 - 7 - 12
60	20 - 0	2328	768	316	10 - 8 - 0	13 - 7 - 14
65	21 - 8	2568	795	348	11 - 2 - 21	14 - 7 - 18
70	23 - 4	2824	843	383	11 - 8 - 17	15 - 7 - 8
Life	25 - 0	3084	916	439	12 - 8 - 23	16 - 6 - 18

* Nine month restriction applies to all 2C cases only.

ELIGIBILITY TERMS FOR 2C PENAL CODE CASES AND 2A FIRST OFFENDER CASES

Use the attached chart to figure eligibility terms for 2C Penal Code Cases and 2A First Offender Cases.

1. First find the maximum sentence in Column A. Follow across to Column B which will show one-third of the maximum sentence.

2. Subtract any jail credits from one-third of the maximum sentence which was found in Column B. This is the new flat eligibility term. (Note: commutation credits will be given only on the portion that is left once the jail credits have been subtracted).

3. Follow the new flat eligibility term derived from Column B across to Column C. Column C shows the amount of commutation time granted toward parole eligibility.

4. By continuing to follow across to Column D and E, you will find the maximum number of work credits (Column D) and the maximum number of minimum credits (Column E) that can be earned. In order to receive this maximum number of credits, an inmate would have to work seven days a week, and be placed on minimum custody as soon as he came into the prison system. Since these conditions are unlikely to occur, this section of the chart should only be used to estimate credits.

5. Column F shows the earliest time an inmate could be eligible for parole. This time period is based on the maximum amount of work and minimum credits and assumes that no commutation credits have been lost.

6. Column G shows the latest time an inmate would be eligible for parole. This assumes that no commutation credits have been lost and that no work credits or minimum credits are earned.

7. Unless an inmate has lost commutation credits, the eligibility will fall between the amounts of time shown in Column F and Column G.

8. Remember, this chart does not apply to any 2C case if a mandatory minimum term has been imposed, or if the inmate is a 2A case multiple offender.

9. For all 2C sentences, at least 9 months (less jail credits) must be served. This nine month restriction applies to all adult inmates sentenced to at least one year or more in a

state institution. The nine month restriction does not apply to young adult inmates committed to serve indeterminate sentences.

TWO SAMPLE CALCULATIONS OF ADULT INMATE PAROLE ELIGIBILITY DATES FOR 2C PENAL CODE SENTENCES

EXAMPLE I: No Mandatory Minimum Term Imposed

A. An offender is sentenced to a six year sentence on January 1, 1986. The first step is to add two years, which is one-third (1/3) of six years, to the date of sentence.

January 1, 1986 + 2 years = January 1, 1988

B. The second step is to subtract jail credits. If the sentencing judge allowed 120 days of jail credit, then 120 days are subtracted from January 1, 1988.

January 1, 1988 - 120 days jail credit = September 3, 1987

C. The third step is to calculate commutation credits and to subtract them. (Note: commutation credits are given on 1/3 of the maximum sentence less jail credits). For this example, 128 days commutation credit are allowed and are subtracted from September 3, 1987.

September 3, 1987 - 128 days commutation credit = April 28, 1987

This date is called the book parole eligibility date.

D. To reach an actual parole eligibility date, actual earned work credits and minimum custody credits must be subtracted from the book parole eligibility date. For this example, if the person has worked 150 days, he will receive 30 work credits (one-fifth of 150 days). If he has been in minimum custody for 4 months, he will also receive 12 minimum credits (3 credits per month for 4 months). These credits are subtracted from the book parole eligibility date of April 28, 1987.

April 28, 1987 - 42 days credit (30 days work + 12 days minimum = March 17, 1987

The date of March 17, 1987 is called the actual parole eligibility date. Remember that for all 2C sentences, at least 9 months (less jail credits) must be served.

EXAMPLE II: Mandatory Minimum Term Imposed.

A. An offender is sentenced to a 10 year sentence with a 5 year mandatory - minimum term on January 1, 1986. The first step in this example is to add the mandatory - minimum term (5 years) to the date of sentence.

January 1, 1986 + 5 years = January 1, 1991

B. The second step is to subtract jail credits. If the judge has allowed 180 days of jail credit, 180 days are subtracted from January 1, 1991.

January 1, 1991 - 180 days jail credit = July 5, 1990

Remember that with mandatory minimum terms, no commutation, work or minimum credits can reduce the parole eligibility date. As a result, the date of July 5, 1990 will be the actual parole eligibility date.

COMPUTING ELIGIBILITY TERMS FOR YOUNG ADULT INMATES

For all young adult offenders who are sentenced to an indeterminate term of years in the Youth Correctional Complex, the parole law does not set a parole term. Rather, parole eligibility is determined by "time goals" which consider the length of the sentence imposed and the crime committed.

Use the attached charts to figure eligibility terms for young adult offender cases.

1. First determine which time goal schedule to follow based upon whether the offense was committed prior to or after May 6, 1985.

2. Find the category of the inmate's crime. If the sentence is for more than one crime, use the highest category.

3. Identify the length of the indeterminate sentence on the top line of the schedule. Follow this column down to the appropriate category to determine the presumptive term for the crime and sentence. (Set forth in terms of months).

4. It is important to remember that the presumptive eligibility or time goal date can be decreased or increased for aggravating or mitigating factors. If jail credits were awarded, they should be subtracted from the time goal date.

5. Young adult inmates reduce their eligibility dates by participating in institutional programs and by avoiding institutional charges. The Board's Young Adult Panel evaluates overall institutional behavior and will rate each inmate as above average, average, below average or poor (no credits awarded).

6. The attached chart "Primary Parole Eligibility Terms," sets forth a young adult offender's actual parole eligibility date. It is computed by subtracting program participation credits from the presumptive eligibility term.

TIME GOAL SCHEDULE FOR YOUNG ADULTS
(Applies to Offenses committed prior to May 6, 1985)

PRESUMPTIVE PRIMARY ELIGIBILITY DATES (MONTHS)

LENGTH OF INDETERMINATE TERM
(Years)

CRIME CATEGORY	0-4	5-9	10-14	15-19	20-24	25-29	30-Life
Category A		40	56	74	90	106	120
Category B	16	32	40	48	56	56	56
Category C	16	24	32	40	48		
Category D	14	16	24	32	40	40	40
Category E	12	12	16	19	19	19	19
Category F	10	10					
Category G	8						

Category A - Murder
Category B - Kidnapping, Aggravated Sexual Assault, Manslaughter, Arson
Category C - Armed Robbery
Category D - Robbery, Aggravated Assault, any second degree crime not listed.
Category E - Sale or Distribution of Narcotics
Category F - Possession of Narcotics, Burglary, Theft, Receiving Stolen Property, Possession of Stolen Property, Possession of a Weapon, Bribery, Forgery, Perjury, Terroristic Threats, any third degree crime not listed.
Category G - Escape, Non-Support, Death by Auto, any fourth degree crime not listed.

TIME GOAL SCHEDULE FOR YOUNG ADULTS
(Applies to Offenses committed on or after May 6, 1985)

PRESUMPTIVE PRIMARY ELIGIBILITY DATES (MONTHS)

LENGTH OF INDETERMINATE TERM
(Years)

CRIME CATEGORY	0-4	5-9	10-14	15-19	20-24	25-29	30-Life
Category A		40	56	74	90	106	120
Category B	16	32	40	48	56	56	56
Category C	16	28	36	44	52		
Category D	14	20	28	36	44		
Category E	12	14	18	22	22		
Category F	10	10					
Category G	8						

Category A - Murder
Category B - Aggravated Manslaughter, Kidnapping first degree, Aggravated Sexual Assault, or any other first degree crime.
Category C - Robbery first degree
Category D - Manslaughter, Robbery second degree, Aggravated Assault second degree, Sexual Assault or any other second degree crime.
Category E - Sale or Distribution of Controlled Dangerous Substance and Possession of Controlled Dangerous Substance with Intent to Distribute
Category F - Burglary third degree, Possession of a Weapon for an Unlawful Purpose third degree, Unlawful Possession of a Weapon third degree, Terroristic Threats, Aggravated Assault third degree, Death by Auto, Endangering the Welfare of a Child third degree, any other third degree crime, or Possession of Controlled Dangerous Substance.
Category G - Criminal Sexual Contact, Forgery fourth degree, Possession of a Weapon fourth degree, or any other fourth degree crime.

STATE PAROLE BOARD

PRIMARY PAROLE ELIGIBILITY TERMS

YOUNG ADULT OFFENDERS

A	B	C	D	E	F	G	H
Presumptive Eligibility Term	Maximum Estimated Program Participation Credits: Above Average Rating (15 days per month)	Maximum Estimated Program Participation Credits: Average Rating (10 days per month)	Maximum Estimated Program Participation Credits: Below Average Rating (5 days per month)	Earliest Eligibility Based on Above Average Program Participation Rating	Eligibility Based on Average Program Participation Rating	Eligibility Based on Below Average Program Participation Rating	Latest Eligibility Based on Poor Program Participation Rating (zero credits
months	days	days	days	yrs-mos-days	yrs-mos-days	yrs-mos-days	yrs-mos-days
8	30	20	10	0 - 7 - 0	0 - 7 - 10	0 - 7 - 20	0 - 8 - 0
10	60	40	20	0 - 8 - 0	0 - 8 - 20	0 - 9 - 10	0 - 10 - 0
12	90	60	30	0 - 9 - 0	0 - 10 - 0	0 - 11 - 0	1 - 0 - 0
14	120	80	40	0 - 10 - 0	0 - 11 - 10	1 - 0 - 20	1 - 2 - 0
16	150	100	50	0 - 11 - 0	1 - 0 - 20	1 - 2 - 10	1 - 4 - 0
18	180	120	60	1 - 0 - 0	1 - 2 - 0	1 - 4 - 0	1 - 6 - 0
20	210	140	70	1 - 1 - 0	1 - 3 - 10	1 - 5 - 20	1 - 8 - 0
22	240	160	80	1 - 2 - 0	1 - 4 - 20	1 - 7 - 10	1 - 10 - 0
24	270	180	90	1 - 3 - 0	1 - 6 - 0	1 - 9 - 0	2 - 0 - 0
26	300	200	100	1 - 4 - 0	1 - 7 - 10	1 - 10 - 20	2 - 2 - 0
28	330	220	110	1 - 5 - 0	1 - 8 - 20	2 - 0 - 10	2 - 4 - 0
30	360	240	120	1 - 6 - 0	1 - 10 - 0	2 - 2 - 0	2 - 6 - 0
32	390	260	130	1 - 7 - 0	1 - 11 - 10	2 - 3 - 20	2 - 8 - 0
36	450	300	150	1 - 9 - 0	2 - 2 - 0	2 - 7 - 0	3 - 0 - 0
40	510	340	170	1 - 11 - 0	2 - 4 - 20	2 - 10 - 10	3 - 4 - 0
44	570	380	190	2 - 1 - 0	2 - 7 - 10	3 - 1 - 20	3 - 8 - 0
48	630	420	210	2 - 3 - 0	2 - 10 - 0	3 - 5 - 0	4 - 0 - 0
52	690	460	230	2 - 5 - 0	3 - 0 - 20	3 - 8 - 10	4 - 4 - 0
56	750	500	250	2 - 7 - 0	3 - 3 - 10	3 - 11 - 20	4 - 8 - 0
74	1020	680	340	3 - 4 - 0	4 - 3 - 10	5 - 2 - 20	6 - 2 - 0
90	1260	840	420	4 - 0 - 0	5 - 2 - 0	6 - 4 - 0	7 - 6 - 0
106	1500	1000	500	4 - 8 - 0	6 - 0 - 20	7 - 5 - 10	8 - 10 - 0
120	1710	1140	570	5 - 3 - 0	6 - 10 - 0	8 - 5 - 0	10 - 0 - 0

NOTE: A young adult offender's actual parole eligibility date is computed by reducing the tentative parole eligibility date (based on the eligibility term/time goal minus jail credit) by program participation credits. These program credits are determined by the Board panel at each Annual Review Hearing and at the Mid-Goal Review Hearing.

Program credits are assigned on the basis of correctional time. No program participation credits may be earned during the first six months of correctional time. Correctional time is considered the eligibility term/time goal less jail credit.

All computations are based on zero jail credit.

SAMPLE CALCULATION OF A YOUNG ADULT INMATE PAROLE ELIGIBILITY DATE

A. An offender is sentenced to a ten year indeterminate sentence on January 1, 1986. His offense is Aggravated Assault committed on March 30, 1985. Thirty days of jail credit are allowed by the sentencing judge.

B. The Young Adult Panel will review this case shortly after the offender is received into the system in order to set a time goal.

C. A ten year indeterminate sentence for Aggravated Assault has a presumptive time goal of twenty-four months (see chart for computing time goals). Assuming no aggravating or mitigating circumstances in this case, the Young Adult Panel would establish a twenty-four month time goal.

D. The tentative release date is calculated by adding the time goal (24 months) to the date of sentence, and reducing this by jail credits. For this example, assume the sentencing judge allowed 30 days jail credit.

January 1, 1986 + 24 months = January 1, 1988
January 1, 1988 - 30 days jail credit =
December 2, 1987.

December 2, 1987 would be the <u>tentative</u> parole eligibility date.

E. A young adult inmate's actual parole eligibility release date is computed by reducing the tentative parole eligibility date by program participation credits. (see chart on previous page). These program credits are determined by the Board panel during each Annual Review Hearing and at the mid-goal review. A mid-goal review hearing in this case would be conducted in December 1986 and program participation credits assigned at that time.

F. Program credits are assigned on the basis of correctional time. Also, no program participation credits may be earned during the first six months of correctional time. The inmate's correctional time is his goal (24 months) less jail credit (30 days) or a total of twenty-three months correctional time. Program credits may be allowed on the basis of seventeen months (23 months less the first six months).

G. Assuming "above average" credits were allowed to this inmate for program participation, the tentative eligibility date would be reduced by 255 days (15 credits per month for above average credits multiplied by 17 months). The new tentative release date would be reduced from December 2, 1987 to March 22, 1987.

C. RELEASE OF ADULT COUNTY INMATES

Inmates sentenced to a term of less than one year in a county penal institution become eligible for parole after serving one-third of the maximum less commutation, work, minimum custody, and jail credits or sixty days less jail credits, whichever is greater. N.J.S.A. 30:4-123.51(g). The parole law requires a county inmate to serve at least 60 days before release on parole, so that an inmate serving a sentence of 60 days or less will never be eligible for parole.

Due to the shorter periods of incarceration, notice of parole eligibility is given to the prosecutor by the court at time of sentence rather than by the Parole Board. N.J.S.A. 30:4-123.51(g). The prosecutor remains entitled to provide comments to the Board on the issues of parole and the imposition of any special parole conditions.

D. SEX OFFENDERS

An offender sentenced to the Adult Diagnostic and Treatment Center at Avenel is within the custody of the Department of Corrections which is responsible for providing his treatment. N.J.S.A. 2C:47-7. However, each adult inmate sentenced to Avenel is subject to a parole determination that is radically different from the standards applied to other prisoners. State v. Howard, 110 N.J. 113 (1988). Sex offenders are not eligible for parole consideration until the Special Classification Review Board at

Avenel recommends the inmate to the Parole Board and after the expiration of any mandatory minimum term. N.J.S.A. 30:4-123.51(e). The inmate will be released on parole when the Parole Board is satisfied that he is "capable of making an acceptable social adjustment in the community." N.J.S.A. 2C:47-5. These parole consequences must be explained to a sex offender who pleads guilty and faces possible confinement at Avenel. State v. Howard, supra.

Not every sex offender sentenced to Avenel under the Code can or will respond affirmatively to treatment. Gerald v. Commissioner, N.J. Dept. of Corr., 201 N.J. Super. 438, 446 (App. Div. 1985), aff'd. as modified 102 N.J. 435 (1986). If treatment cannot be effectively rendered, N.J.S.A. 2C:47-4(b) authorizes his transfer to another institution. Id. The consequences of this transfer is to terminate the inmate's sex offender status for purposes of determining the conditions of his confinement and release. Id. at 447. In these circumstances, the purpose of the remaining sentence is punitive, and parole eligibility is governed by the general parole statute, N.J.S.A. 30;4-123.51(a), in the same manner as if the inmate had been sentenced to a regular prison facility for the fixed term originally imposed. Id.

Sex offenders sentenced under Title 2A to the Adult Diagnostic Treatment Center shall, if transferred or released from treatment, be treated in the same manner as and in accordance with the standards applicable to a sex offender sentenced under the Code. Gerald v. Commissioner, N.J. Dept. of Corr., 102 N.J. 435, 437 (1986). However, the Title 2A sex offender cannot be

transferred to state prison and confined under his original sentence because these prisoners do not have a fixed term necessary for application of N.J.S.A. 30:4-123.51(a). Id. In this situation, the Commissioner of Corrections has the option of transferring the Title 2A sex offender back to Avenel from state prison to serve the original sentence if the overall intendment of the Title 2A sentence remains operative. Id. at 439. If the Commissioner decides that a retransfer is not appropriate, the inmate shall be resentenced to a fixed term. Id. at 439-440, Artway v. Com's, N.J. Dept. of Corr., 216 N.J. Super. 213 (App. Div. 1987).

E. JUVENILE INMATES

The Board is also responsible for juvenile parole matters. N.J.S.A. 30:4-123.47(d). The applicable standard for release, however, is that it shall "appear that the juvenile, if released, will not cause injury to persons or substantial injury to property." N.J.S.A. 30:4-123.53(b). In general, parole of juveniles closely parallels the adult parole process. The Board must give notice to the prosecutor and the committing court prior to its initial consideration of a juvenile inmate for release. N.J.S.A. 30:4-123.48(h).

If a juvenile inmate is approved for parole prior to serving one-third of any term imposed for a crime of the first, second or third degree or one-fourth of any term imposed for any other crime, parole is subjected to the approval of the sentencing

court. N.J.S.A. 2A:4A-44(d)(2). Prior to approving parole, the court must give the prosecuting attorney notice and an opportunity to be heard. Id.

F. PAROLE REVOCATION

1. Pre-Conviction Application

If a parolee from a state correctional institution is arrested or charged with a crime for which he has not yet been convicted, the prosecutor may request implementation of the parole revocation process. N.J.S.A. 30:4-123.60(b), N.J.A.C. 10A:71-7.3(b). The prosecutor will generally receive notification of the pending charge from the Bureau of Parole which is a part of the Department of Corrections and in charge of supervising parolees. N.J.S.A. 30:4-123.59, N.J.A.C. 10A:71-7.3(a).

A prosecutor may institute a pre-conviction proceeding by submitting a request to the Parole Board. N.J.S.A. 30:4-123.60(b). The prosecutor must show that the new offense is serious and that the parolee otherwise poses a danger to the public safety. Id. The written application should 1) request the parole revocation, 2) request notice of all future Board hearings, 3) set forth the amount of bail, 4) establish the likelihood that the parolee will be released from detention, 5) include discovery materials which establish guilt for the serious new crime or act of delinquency, and 6) provide reasons why the parolee poses a danger to the public safety. N.J.A.C. 10A:71-7.3(b)(1)-(4). A prosecutor's application for a "pre-conviction parole revocation"

of a paroled juvenile follows the same format ass that for an adult offender contained in N.J.A.C. 10A:71-7.3. (See attached sample application).

It is important to note that if there is no request from the prosecutor, the Board cannot take any action before disposition of the new criminal charges. However, the District Parole Office may lodge detainers and initiate proceedings for technical violations or incidents involving firearms. N.J.S.A. 30:4-123.62.

2. Parole Warrants

If the Parole Board decides to act upon a prosecutor's application for parole revocation, it will issue a warrant for the arrest of the parolee. If the parolee is already in custody, the Board will lodge its warrant as a detainer. No parolee held in custody on a parole warrant is entitled to release on bail. N.J.S.A. 30:4-123.64(a).

3. Parole Revocation Hearings

Within 14 days of the execution of a parole warrant, the parolee will receive a preliminary hearing to determine if probable cause exists to believe the parolee violated the conditions of parole and whether he should be detained for a revocation hearing. N.J.S.A. 30:4-123.62(b),(c). The prosecutor may appear at the preliminary hearing and present evidence of parole violations. N.J.A.C. 10A:71-7.3(b). This hearing is required even if the parolee has been indicted by a grand jury. N.J.A.C. 10A:71-7.4.

If probable cause is established, a revocation hearing will usually be conducted within 60 days of the execution of the parole warrant. N.J.S.A. 30:4-123.63(a). The prosecutor must establish by clear and convincing proof that the parolee committed the new serious crime; but it is doubtful that the clear and convincing standard must be met in establishing that the parolee is a danger to public safety. N.J.S.A. 30:4-123.63(d).

4. Post-Conviction Parole Revocation

When pre-conviction revocation proceedings have not occurred and a parolee is convicted of a new crime, he will only receive a revocation hearing. N.J.S.A. 30:4-123.63(a), N.J.S.A. 30:4-123.62(h). The parolee will have his parole revoked unless he demonstrates to the Board by clear and convincing evidence that good cause exists not to return him to custody. N.J.S.A. 30:4-123.60(c), White v. N.J. State Parole Bd., 136 N.J. Super. 360 (App. Div. 1975). The sentence received for the offense committed on parole will run consecutively with any period of reimprisonment that the Parole Board may require the defendant to serve upon revocation of parole, unless otherwise ordered by the court. N.J.S.A. 2C:44-5(c).

OFFICE OF THE PROSECUTOR
COUNTY OF ATLANTIC
POST OFFICE BOX 2002
19TH AVENUE AT ROUTE 40
MAYS LANDING, N.J. 08330
(609) 625-7000 or 645-7000

JEFFREY S. BLITZ
PROSECUTOR

ALBERT J. GAROFOLO
1st ASSISTANT PROSECUTOR

BERNARD J. McBRIDE
CHIEF OF COUNTY DETECTIVES

SAMPLE

DATE

Honorable Louis Nickolopoulos, Chairman
New Jersey State Parole Board
CN 862
Trenton, NJ 08625

RE: NAME
Application for Pre-Conviction Parole Revocation
Our File No.
Discovery Attached

Dear Chairman Nickolopoulos:

Pursuant to N.J.S.A. 30:4-123.60(b), I hereby request that the current parole status of the above-named parolee be revoked, and that he/she be returned to your custody as a serious or persistent parole violator who poses a danger to public safety.

This Office requests advance notification of all revocation proceedings. Further, the Atlantic County Prosecutor's Office requests leave to appear and present material and/or evidence in support of its position at all stages of revocation proceedings.

Finally, this Office requests prior notification of the names of all witnesses intended to be called at any revocation proceeding.

I. PAROLE BACKGROUND
(Provide facts)
NAME:
DOB:
SS:
RELEASE STATUS:
LAST PAROLE:
MAXIMUM DATE:
BAIL STATUS:

OFFENSES ALLEGED:
GRAND JURY:

II. SERIOUS/PERSISTENT NATURE OF PAROLE VIOLATION
(Provide facts and attach discovery)

III. DANGEROUSNESS TO PUBLIC SAFETY
(Provide facts)

IV. CONCLUSION

The Atlantic County Prosecutor therefore requests that a warrant for detention of (NAME) on violation of parole be issued to the Atlantic County Sheriff, the Warden of the Atlantic County Jail, and all appropriate law enforcement officials, and that the parole status of the aforesaid parolee be revoked according to the statutes and regulations governing this matter.

Respectfully,

JEFFREY S. BLITZ
Atlantic County Prosecutor

cc: Superior Court, Atlantic County
District Parole Supervisor

ATTORNEY GENERAL DIRECTIVES

A. POLICY OF THE ATTORNEY GENERAL REGARDING MISSING AND UNIDENTIFIED PERSONS INVESTIGATIONS

The investigation and resolution of missing persons cases are an important responsibility of the law enforcement community in New Jersey. The difficult problems surrounding missing persons cases demand from the law enforcement community a prompt, informed and uniform response. It is imperative that missing and unidentified persons investigations be given the appropriate degree of priority treatment. Follow-up investigations and public safety activities should be timely and comprehensive. The victim's family should be kept informed of the progress of the investigation and family referrals to the appropriate support services should be made as required.

All available law enforcement resources must be utilized in an appropriate fashion to ensure that all necessary steps are taken to protect our children and other missing persons. To better accomplish this objective each agency's chief law enforcement executive shall:

> Provide leadership by developing a clear and concise written order or directive based upon these standards and disseminating it to all law enforcement officers of the agency.
>
> These law enforcement standards will be meaningless unless the chief law enforcement executive of the agency provides direction and leadership through a well-defined written order or directive which provides an agency based framework for these missing and unidentified persons investigation standards.

PURPOSE OF MISSING AND UNIDENTIFIED PERSONS INVESTIGATIVE STANDARDS

From Donald R. Belsole
First Assistant Attorney General and Criminal Justice Director

At the direction of Attorney General W. Cary Edwards, and as the First Assistant Attorney General and Criminal Justice Director I have issued these investigative standards for missing and unidentified persons cases to be used by New Jersey law enforcement in conducting timely and comprehensive missing and unidentified persons investigations.

These procedural standards are effective December 4, 1987 and supercede all previous Attorney General directives relating to this issue.

In the first six months of 1987, 8,058 persons in the State of New Jersey were listed as missing in the National Crime Information Center missing persons file. These types of incidents present a unique and significant public safety problem to the law enforcement community. Law enforcement officers investigating missing and unidentified persons incidents are frequently faced with a case that generally lacks significant investigative leads. The investigative problems are compounded by readily available transportation networks which facilitate the rapid movement of victims and suspects. These same investigative complexities occur in non-criminal missing or unidentified person incidents.

In any case the accurate and comprehensive collection of information and personal descriptors entered in a timely

manner in the National Crime Information Center computer system generally facilitates a successful resolution to the missing and unidentified persons case.

These investigative standards will provide an organized investigative framework for the timely and comprehensive investigation of missing and unidentified persons incidents.

ROLE AND RESPONSIBILITIES OF THE LAW ENFORCEMENT CHIEF EXECUTIVE

1. Provide leadership by developing a clear and concise written order or directive based upon these standards and disseminating it to all law enforcement officers of the agency.

2. Ensure that all law enforcement officers receive appropriate training in all operational areas relating to missing and unidentified persons investigations as set forth in the agencies missing/unidentified persons written order or directive.

3. Ensure that an appropriate initial law enforcement response is provided to all reports of missing or unidentified persons and that an appropriate follow-up investigation is carried out.

4. Effectively calm the families of missing persons and reduce their fear through direct ongoing official communication regarding the missing person incident.

5. Reassure the family that appropriate investigative and enforcement methods will be utilized by the law enforcement agency in addressing the incident.

6. Interact with concerned community organizations and civic groups regarding the missing persons incident as necessary.

7. Ensure that appropriate and accurate media relations are maintained regarding missing and unidentified persons investigations.

8. Ensure that referrals to the county prosecutor's victim/witness services coordinator are made as appropriate.

9. Ensure that Crime Prevention and Personal Safety Programs are conducted regarding missing persons issues as appropriate.

MISSING AND UNIDENTIFIED PERSONS INVESTIGATIVE STANDARDS POLICY AND PROCEDURES FOR NEW JERSEY LAW ENFORCEMENT

The missing and unidentified persons investigative standards establish the following procedural guidelines:

New Jersey Law Enforcement Agencies shall conduct a standard preliminary investigation as soon as a juvenile or adult is reported missing or an unidentified person is found and prepare a standard police incident report documenting the basic facts and circumstances surrounding the incident.

Prompt action shall be initiated in order to locate a missing juvenile or adult or to identify any unidentified person.

Law enforcement agencies shall undertake any other immediate action required to maintain order and protect the public.

Follow-up investigative personnel shall conduct a thorough and timely follow-up investigation.

Investigators shall complete investigative reports documenting the facts and circumstances of the investigation.

FOR MISSING PERSON INCIDENTS:

As soon as a juvenile or adult is reported missing, pertinent information and identifying characteristics regarding the missing person shall be entered immediately into the National Crime Information Centers missing person files. (NCIC)

A File 6 (NJLETS) teletype messages with all available, pertinent information regarding the missing person shall be broadcast concurrently with the entry into the National Crime Information Center Unidentified Persons File. The teletype shall be broadcast on a statewide basis and expanded as the need exists.

In addition to a General Police Incident Report, the Missing Person Report for NCIC Record Entry shall be adopted as the standard document for the collection of specific information regarding a missing person in accordance with Federal Bureau of Investigation-National Crime Information Center guidelines.

The New Jersey State Police Missing Persons Report Written Documentation Form shall be used as appropriate. This document is available for reproduction from the New Jersey State Police Missing Persons Unit.

The Missing Persons Investigation Packet entitled "Missing Person File, Data Collection Entry Guide" should be used to organize data collection and to collect additional information from the family of the missing person and other appropriate information sources during a missing person's investigation. This document is available from the Federal Bureau of Investigation-National Crime Information Center.

Upon the return or locating of the missing person the record shall be immediately cleared from the National Crime Information Center missing persons file. (NCIC)

A File 6 (NJLETS) teletype message shall be broadcast immediately regarding the return or locating of the missing person.

It is the responsibility of each entering agency to clear NCIC entries and update NJLETS File Messages upon the return or location of a missing person.

FOR UNIDENTIFIED PERSON INCIDENTS:

In the case of Unidentified Persons, living or deceased the National Crime Information Center Unidentified Persons File shall be utilized as soon as the individual identifying characteristics become available which are necessary for the basic file entry.

A File 25 (NJLETS) teletype messages with all available, pertinent information regarding the Unidentified Person shall be broadcast concurrently with the entry into the National Crime Information Center Unidentified Persons File. The teletype will be broadcast on a statewide basis and expanded as the need exists.

In addition to a General Police Incident Report, the Unidentified Person Report for NCIC Record Entry should be used as the standard document for the collection of specific information regarding an unidentified person.

The Unidentified Persons Investigation Packet entitled "Unidentified Person File, Data Collection Entry Guide" should be used to organize data collection and to collect additional information from other appropriate sources during an unidentified persons investigation.

This document is available from the Federal Bureau of Investigation-National Crime Information Center.

When an unidentified person is identified, the record entry shall be immediately cleared from the National Crime Information Center Unidentified Persons File. (NCIC)

A File 25 (NJLETS) teletype message shall be immediately broadcast regarding the identification of the previously reported unidentified person.

It is the responsibility of each entering agency to clear NCIC entries and update NJLETS File Messages upon identifying the previously unidentified person.

FOR MISSING AND UNIDENTIFIED PERSONS INVESTIGATIONS

Law enforcement agencies engaged in a missing or unidentified persons investigation shall contact the New Jersey State Police Missing Persons Unit and other appropriate law enforcement agencies for assistance as required.

Where a crime or other unlawful act is suspected, law enforcement agencies engaged in a missing or unidentified person investigation shall work with the county prosecutor in developing the case for criminal prosecution as appropriate.

Referrals to the county prosecutor's victim/witness services coordinator shall be made as appropriate.

Crime Prevention and Personal Safety Programs shall be conducted regarding missing persons issues as appropriate.

VIOLENT CRIMINAL APPREHENSION PROGRAM VICAP

The Violent Criminal Apprehension Program (VICAP), established by the Federal Bureau of Investigation is a nationwide data information center designed to collect, collate and analyze a variety of violent crime information. VICAP provides all law enforcement agencies reporting similar patterns of violent crimes with the information necessary to initiate coordinated multi-agency investigations.

In cases where investigation reveals that a missing person or unidentified person has been a victim of a violent act, use of the Violent Criminal Apprehension Program (VICAP) should be explored.

Information regarding the VICAP Program is available from any local Federal Bureau of Investigation Office or by writing to VICAP Program, FBI Academy, Quantico, VA, 22135.

NEW JERSEY STATE POLICE
MISSING PERSONS UNIT

P.O. Box 7068
West Trenton, NJ 08628 - 0068
Telephone: (609) 882 - 2000
Extensions 2893 - 2894 - 2895

FORMAT FILE 6 MESSAGE

MESSAGE # FILE 6, AGENCY/STATION NAME DATE

MISSING PERSON ADDRESS

Juvenile or adult (disabled, endangered, involuntary, disaster victim). If juvenile, indicate stranger abduction, parental abduction, runaway or other circumstances.

NAME

DOB SEX RACE EYE HAI HGT WT SKN

SCARS, BIRTH MARKS, TATTOOS, GLASSES/BRACES, AMPUTATIONS, ETC.

CLOTHING

VEHICLE INFORMATION - LIC/LIS/VIN/VMA ETC.

LOCATION LAST SEEN

POSSIBLE DESTINATION

OCA/ORIGINATING AGENCY CASE NUMBER

AUTHORITY/ORIGINATING AGENCY NAME, NCIC AGENCY ID, TIME/INITIALS

NCIC MISSING PERSON REPORT WRITTEN DOCUMENTATION FORM

☐ **D – DISABILITY**

A person of any age who is missing and under proven physical/mental disability or is senile, thereby subjecting himself/herself to personal and immediate danger.

☐ **E – ENDANGERED**

A person of any age who is missing and in the company of another person under circumstances indicating that his/her physical safety is in danger.

☐ **I – INVOLUNTARY**

A person of any age who is missing under circumstances indicating that the disappearance was not voluntary, i.e., abduction or kidnapping

☐ **V – VICTIM**

A person of any age who is missing after a disaster (explosion, fire, plane crash, etc.)

MARK THE APPROPRIATE CATEGORY ABOVE:

The completion of this form will be reassurance that the rights to privacy of the individual will not be violated. Accepted documentation may be provided by physician, parent, legal guardian, next of kin, or other authoritative source. The other source must not be the investigative police agency.

The described person is reported missing as marked in the category and with the corresponding definitions set forth above. I authorize that a record of this missing person report will be entered into the National Crime Information Center (NCIC) Missing Persons Files.

NAME			
ADDRESS	(Street)	(City)	(State
SIGNATURE		TITLE	

PHYSICIAN, PARENT, LEGAL GUARDIAN, NEXT OF KIN, OTHER SOURCE
CIRCLE APPROPRIATE SIGNATURE SOURCE

S P 22A (Rev 1 88) (S.O.P E29)

NEW JERSEY STATE POLICE
MISSING PERSONS UNIT

P.O. Box 7068
West Trenton, NJ 08625
Telephone: (609) 882 - 2000
Extensions 2893 - 2894 - 2895

WHEN YOU SUSPECT YOUR CHILD HAS RUN AWAY – CHECKLIST FOR PARENTS

- ★ Contact the police. Request an investigation. Also request that your child's name be placed into the National Crime Information Center (NCIC) and New Jersey Teletype System (NJLETS). Ensure that you provide the police correct information about your child (name, date of birth, description, etc.).
- ★ Insure that someone stays at home in the event the child returns or someone calls with information.
- ★ Try to keep a telephone line open in your home; make calls from another telephone, if possible.
- ★ Search your entire home starting with your child's room - Look for notes, telephone numbers, photos or anything that can help to indicate where your child could have gone. Also look for road maps.
- ★ Did he/she take money, credit cards or have access to any bank accounts, MAC cards, etc.?
- ★ Did he/she take clothing or luggage? Provide a description to police.
- ★ Contact neighbors.
- ★ Contact relatives.
- ★ Contact your child's school.
- ★ Contact area hospitals.
- ★ Check to see if any of your child's friends are also missing, they may be together.
- ★ Contact all known friends of child. Also inquire if they know of any other friends of your child that you can contact. Tell them that in the event your child calls them ask: his/her location; phone numbers; is he/she with anyone; is he/she safe; does he/she want help; what is his/her destination.
- ★ Car/Bus/Bike/Train/Airplane/Etc. - Check all terminals in your area.
- ★ If your child was employeed, contact employer and co-workers.
- ★ If child is of military age, check the local recruiters offices.
- ★ Examine all of your previous phone bills for telephone numbers.
- ★ Search the various places of interest of your child.
- ★ Search the malls that are located near your home.
- ★ Contact:
  the National Center for Missing Children at 1 (800) 843 - 5768 or 1 (202) 634 - 9821.
- ★ Obtain recent photographs of your child and provide them to the police, for distribution of flyers and posters.
- ★ If a child is believed to be traveling to New York City, and you can ascertain bus line, contact the Port Authority, Youth Services Unit at (212) 502 - 2205.

SP 43 (3/85)

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
RICHARD J. HUGHES JUSTICE COMPLEX
CN 080
TRENTON, N.J. 08625-0080
609-292-4919

W. CARY EDWARDS
ATTORNEY GENERAL

December 4, 1987

Dear Prosecutor:

I am writing to you about an important issue: missing persons. The problem of missing persons can affect the most vulnerable members of our society and deserves the full attenti of the law enforcement community in New Jersey. I am forwardi a copy of this letter and new Law Enforcement Investigative Standards regarding the investigation and reporting of missing persons to each County Prosecutor and Chief Law Enforcement Executive in New Jersey. These Law Enforcement Investigative Standards will supersede and update the Attorney General's Directives, regarding missing persons, dated June 12, 1984 and March 8, 1985.

Few issues underscore as dramatically the profound changes our society has experienced. The public attention focused upon runaway or upon children abducted by a non-custodial parent or stranger is closely related to the transformation of our societ into an increasingly mobile society, less dependent than ever upon the structure of the traditional family unit. The concern and fears we associate with missing persons mirror, in many way the anxiety we attach to a society in flux.

In the course of addressing the disparate variety of missin persons cases, it is imperative that we focus on the actual sco and nature of the problem itself. Despite the uneven reporting and cancellation of missing persons cases, the best assessments reveal that the great quantity of missing persons cases involve runaways and parental abductions.

In 1986, a total of 15,393 persons in New Jersey, including 12,405 juveniles, were at one time or another listed as missing with the National Crime Information Center (NCIC). Of this total 318 cases remained active throughout 1986. In the first six months of 1987, 8,058 missing persons reports were taken, including 6,560 juveniles. Total active missing persons cases for this period is 95. A case by case analysis of active missing persons cases for the period 1976-1984 conducted by the State Police Missing Persons Unit, indicate that over 96% of all missing persons cases are resolved. Assessments by the National Center for Missing and Exploited Children (NCMEC) indicate that 78% of all reported missing children are runaways, 19% are parental abductions and about 2% are the victims of stranger abductions.

Every one of these cases presents a unique problem to law enforcement and unimaginable heartache to the family or individuals involved. As with so many problems throughout our society, law enforcement personnel are the first to respond. The investigator is often confronted with a complex and elusive fact pattern, demanding the full application of his or her training. In all instances, the investigator must remain sensitive to the essential human predicament.

The law enforcement community throughout the State of New Jersey has significantly improved its ability to respond to this difficult issue in a prompt, informed and uniform fashion. The reporting of missing persons into NCIC in New Jersey has increased almost 65% during the years 1984 to 1986. But more must still be done, particularly with regard to cancellations. All technological tools available to law enforcement must be utilized in an appropriate fashion to ensure that all necessary steps are taken to protect our children and other missing persons.

Accordingly, I have directed that uniform Law Enforcement Investigative Standards (attached) be issued, regarding the investigation and reporting of missing persons. These Standards will further enhance the ability of the law enforcement community in New Jersey to bring the investigation of missing persons, both juvenile and adult, unidentified persons and unidentified decedents to a successful conclusion.

Significant highlights of these Law Enforcement Investigative Standards include:

- The requirement that prompt action be taken to locate a missing person as soon as a person is reported missing.

- The requirement that pertinent information be entered into NCIC and the New Jersey Law Enforcement Telecommunication System (NJLETS) as soon as a person is reported missing.

- The requirement that NCIC and NJLETS record entries be canceled on a timely basis as soon as an investigation has been concluded.

- The requirement that NCIC record entry forms (attached) be utilized as the standardized document for the collection of information regarding missing and unidentified persons both living and deceased, in New Jersey.

- The requirement that appropriate NCIC and NJLETS files be utilized with regard to unidentified persons, living or deceased, and that these entries be canceled on an appropriate and timely basis.

- The requirement that law enforcement personnel communicate effectively on an ongoing basis with the families of missing persons and make appropriate support service referrals.

In addition, these Law Enforcement Standards encourage law enforcement personnel to utilize the Missing Persons Packets and Unidentified Persons Packets (attached). These packets are strong organizational tools that may provide the framework for a successful investigation. Both packets are available from the NCIC.

The Law Enforcement Standards also reference the Violent Criminal Apprehension Program (VICAP). VICAP, established by and accessed through the FBI, is a nationwide data center designed to collect, collate and analyze a variety of violent crimes. VICAP provides all law enforcement agencies reporting similar patterns of violent crimes with the information necessary to initiate a coordinated multi-agency investigation.

Three offenses/incidents, listed in the Case Management Section of a VICAP report, may, in some instances, be closely associated with missing persons investigations: kidnaping (fatal, with injury, or for ransom), missing persons with evidence of foul play and unidentified bodies where the manner of death is classified as homicide. In those specific instances where investigation reveals that a missing person has been a victim of a violent act, the use of VICAP should be explored. All law enforcement personnel should be encouraged to utilize VICAP as may be appropriate.

When crimes are committed in a number of jurisdictions, it is important that law enforcement agencies communicate effectively with other jurisdictions. New Jersey, as a corridor state, is heir to all the benefits and detriments that the automobile confers on an increasingly mobile society. The utilization of standardized reporting and cancellation procedures, uniform documents for the collection of information and of NCIC and NJLETS resources are mechanisms that will enable accurate and up to date information about missing persons to flow effectively from one jurisdiction to another.

It is important that all law enforcement personnel comply with the terms of these Law Enforcement Investigative Standards. Prompt and standardized response by law enforcement in the critical early hours of an investigation may be the difference between life and death.

The commitment by law enforcement agencies in New Jersey to this issue is not measured by the ebb and flow of public interest. Law enforcement in New Jersey is determined to take all appropriate action in responding to missing persons cases. commend the law enforcement community for the gains that have been made and reemphasize the need to utilize the resources and procedures detailed in the attached Law Enforcement Investigativ Standards.

Sincerely,

W. CARY EDWARDS
Attorney General

/jdt

Attachments

B. STATEWIDE GUIDELINES ADOPTED BY THE NEW JERSEY ATTORNEY GENERAL AND THE NEW JERSEY COUNTY PROSECUTORS ASSOCIATION REGARDING HIGH SPEED MOTOR VEHICLE PURSUITS

INTRODUCTION

The following guidelines describe the manner and circumstances in which a law enforcement officer may safely and properly resort to the use of high speed driving tactics to pursue and ultimately to apprehend a suspected offender. These guidelines were developed as a result of the joint efforts of representative members of the New Jersey law enforcement community, including the Division of Criminal Justice, the County Prosecutors Association, the Police Training Commission and the New Jersey State Association of Chiefs of Police. The promulgation, dissemination and implementation of these statewide guidelines is necessary to safeguard the health and safety of the general public and to ensure continued public confidence in the high level of skill and professional competence now enjoyed by the New Jersey law enforcement community. By carefully delineating the criteria and factors which a law enforcement officer should consider before undertaking a potentially hazardous high speed chase or before erecting an emergency roadblock, these guidelines establish the parameters of a police officer's discretion. These guidelines are not intended to in any way hamper law enforcement officers from apprehending suspected offenders; nor should they have that effect, since law enforcement officers continue to be

afforded a wide latitude of discretion in individual cases, and thus must continue to rely primarily on common sense. Thus, far from impeding law enforcement personnel in the performance of their sworn duties, these guidelines are intended to make the officer's job easier. By highlighting the countervailing policy concerns and considerations in advance of an actual emergency, these criteria will provide meaningful guidance and will thus ultimately aid the officer in the difficult task of making a reasoned, split-second decision as to the most appropriate course of action in exigent circumstances where there is simply no opportunity for calm ad casual deliberation. The Attorney General and the County Prosecutors, as chief law enforcement officers of the State and counties, respectively, in a joint effort to promote reasonable uniformity throughout the State have promulgated and adopted the following guidelines with respect to high speed motor vehicle pursuits and emergency motor vehicle responses for the guidance of all law enforcement authorities within this State.

Emergency vehicle operations are an inherent activity in the performance of duties of law enforcement officers. The promulgation of universal Guidelines concerning the manner in which these vehicles are to transverse the roadways of this State is necessary to avoid conflicts among the law enforcement agencies:

It is impossible to describe exactly how a law enforcement officer should pursue a fleeing violator of the law, or respond to a specific emergency call, except to state that it must be in accordance with existing law and with due regard for the safety of

all persons. Each pursuit and emergency response has certain different and unique aspects. Accordingly, the provisions set forth in these Guidelines are intended to assist law enforcement officers, when operating an authorized emergency vehicle, to determine what standard of care is reasonable, commensurate with the various circumstances under which the officer has a duty to perform and an obligation to enforce the law.

It is therefore extremely important that these Guidelines be properly disseminated to all appropriate personnel in conjunction with appropriate training. In the event a law enforcement agency shall promulgate Guidelines which are more restrictive than those contained herein, such Guidelines shall prevail with respect to their applicability to that agency's personnel.

I. High Speed Motor Vehicle Pursuit Policy

The definition of "high speed motor vehicle pursuit" is an active attempt by a law enforcement officer operating a motor vehicle and utilizing simultaneously all emergency equipment to apprehend one or more occupants of another moving vehicle when the driver of the fleeing vehicle is aware or should be aware of that attempt and is purposely, knowingly or recklessly resisting apprehension by maintaining or increasing his speed, ignoring the officer or attempting to elude the officer while driving at speeds in excess of the legal speed limit.

A. When to Pursue

Generally, police officers shall make every responsible effort to apprehend a fleeing vehicle. Therefore, a pursuit may be initiated whenever a law violator refuses to stop and uses his

vehicle to flee. The pursuit should always be tempered with common sense and the officer should be aware of the degree of hazard to which he exposes himself and others. The decision to conduct such a pursuit should depend upon the seriousness of the threat that the violator presents to other persons or to society in general; hence the objective of the pursuit must be to apprehend a violator, and the purpose of the apprehension must be to bring the perpetrator to trial. N.J.S.A. 39:4-91, which sets forth the standards of right of way for emergency vehicles, states in part:

> this section shall not relieve the driver of any authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall it protect the driver from the consequences of his reckless disregard for the safety of others.

A police officer, prior to initiating a pursuit involving excessive emergency speed and emergency driving tactics or techniques, should consider the following:

1. The nature of the violation.
2. The likelihood of successful apprehension.
3. The hazard created by the high speed pursuit.
4. The volume, type, speed and direction of the traffic.
5. The nature of the area, whether residential, commercial, school zone, open highway, etc.
6. The population density.
7. Familiarity with the roads.
8. The weather and road conditions; i.e., the width and curves of the roadway; stopping and sight distances.
9. The officer's driving skills and condition of the police vehicle.

B. Nature of Pursuits

The following circumstances are offered as guidelines to be used in considering when and whether a pursuit should be commenced.

1. Non-hazardous violations such as motor vehicle equipment defects, inspection overdues, and registration violations, never warrant prolonged pursuit or the operation of a motor vehicle at excessive speeds. The risk exceeds the necessity for immediate apprehension.

2. Completed violations. Where the danger has passed, i.e., failure to obey a stop sign, a traffic signal, improper passing, or any other non-continual violation, a prolonged pursuit of a motor vehicle at excessive speeds is seldom warranted, particularly when it may cause a greater risk than the violator intended. The responsible discretion of the police officer is relied on very heavily to justify his decision to pursue or not to pursue.

3. Indictable violations and continuing hazardous violations. Pursuit is often necessary to make an apprehension of one suspected of the commission of an indictable offense. In such instances, serious potential for bodily harm or property loss may occur in the event that apprehension does not occur immediately. For example, in kidnapping, destruction or abandonment of critical contraband or evidence, commercial theft, burglaries or the flight of a first or second degree offender, the need to apprehend is paramount but must be weighed against the dangers involved to other highway users, pedestrians, the officer in pursuit and the suspect.

C. Factors to be Considered During Pursuit

1. Officers shall use discretion as to when emergency lights and sirens are to be activated prior to commencing a pursuit. The distance between the violator and the officer should be narrowed as much as possible to avoid alerting the subject to police presence before the officer is in a position to safely stop or pursue the vehicle. During the period, consideration should be given to the use of the radio to alert other patrols that a stop is going to be attempted so that they can begin to

move to a position which will enable a quick response in the event a pursuit is initiated.

2. Upon the commencement of a pursuit, the use of emergency lights, siren and headlights IS MANDATORY.

3. Once a pursuit has been initiated the primary unit must notify communications and give as much of the following information as is known:

   a. Direction of travel, designation and location of roadway.

   b. Identification of the suspect vehicle, year, make, model, color and license number and other identifying characteristics.

   c. Number and direction of occupants.

   d. Violation requiring the pursuit.

   e. The speed of the pursued vehicle.

   f. Other information that may be helpful in terminating the pursuit or resolving the incident.

D. Pursuit Tactics

No more than two police vehicles (primary unit and back up unit) shall become actively involved in a pursuit unless otherwise specifically directed by a superior officer. Other officers should be alerted to the pursuit, its progress and location. Police vehicles other than the primary and secondary units should not travel in line together (caravanning) unless specifically authorized by a superior officer supervising the pursuing units.

1. All other patrol units shall stay clear of the pursuit but remain alert to its progress and location through the continual use of communication by radio by the pursuing units.

2. The primary pursuit unit shall be responsible for not only announcing the initiation of the pursuit but advising communications of all pertinent information concerning the pursuit. The primary pursuit unit is also responsible for the

determination of the pursuit tactics and for the decision to abandon the pursuit unless relieved of that duty by a superior.

3. In the event the primary pursuit unit is unable to proceed with the pursuit, the secondary unit will assume the role of the primary unit and request that another patrol become the secondary unit. If the fleeing vehicle is lost to the pursuing unit, then the primary pursuit vehicle shall cause the chase to be terminated and shall be responsible for providing all available information through radio communication that would assist in locating the object vehicle. Broadcasts to other patrols and surrounding police agencies and the coordination of any other search for the vehicle shall initially be the responsibility of the primary pursuit unit until relieved of that duty by a superior.

E. Use of Unmarked Vehicles

Pursuits in unmarked cars are discouraged. However, officers operating unmarked vehicles which are equipped pursuant to the requirements of N.J.S.A. 39:4-91 may engage in pursuits when the fleeing vehicle represents an immediate or direct continuing threat to life and property. Whenever a marked vehicle becomes available to tail a pursuit initiated by an unmarked vehicle, then the unmarked vehicle should withdraw from the pursuit and serve in a support function for the marked vehicle.

F. Interjurisdictional Pursuit

Notification to another jurisdiction of a pursuit in progress is not a request to join the pursuit. The pursuing agency shall advise if and what assistance is needed or whether they are making contact for notification only.

Pursuit initiated by a law enforcement agency of another jurisdiction shall be under the direction of the initiating unit during the progress of the pursuit.

G. Prohibited Tactics

1. As a general rule officers should not attempt to overtake or pass a fleeing suspect in a high speed chase. Generally the pursuing officer should keep a safe distance from the suspect and merely attempt to keep the suspect vehicle in sight until the suspect voluntarily stops.

2. There shall be no paralleling of pursuit vehicles along the route unless the pursuit passes through a patrol's assigned area. A patrol that is paralleling shall not join or interfere with a pursuit, and further, shall stop all pursuit-related activity at the boundary of its assigned area.

3. Officers may not halt or attempt to halt a suspect vehicle in a high speed pursuit by ramming or striking the suspect's vehicle with a police vehicle, nor shall there be any "heading off" of a suspect vehicle with a police vehicle.

4. Boxing in of a suspect vehicle because of the obvious safety hazards created to the life and property of the officers involved shall be allowed only with the approval of a superior officer supervising the pursuit.

5. The use of a roadblock must be authorized by a superior officer. Generally, a roadblock may be employed only when:

   a. There is definite knowledge that the person in the fleeing vehicle is or are suspected of being wanted for a first or second degree crime, or

   b. The violator constitutes an immediate, continuing and serious hazard to life or property, and all other reasonable efforts to effect apprehension have failed.

Once a roadblock has been established and a vehicle(s) has been positioned in the roadway, there shall be adequate sight distance to see the roadblock, there shall be an avenue of escape, and no one shall remain in the vehicle(s).

At no time will a roadblock be established until all pursuing police vehicles are made aware of the roadblock and its location, and have acknowledged same.

The improvised roadblock generally consists of placing a vehicle or hastily erected barricade across some roadway at some distance ahead of the pursued vehicle to force the stop. Each particular incident must be carefully evaluated. Hastily improvised roadblocks must be employed ONLY AS A LAST RESORT. Moreover, their use must be directly associated with the seriousness of the offense for which the suspect is wanted. Neither the frustration of the chase nor any motor vehicle violations committed by the suspect during the chase are relevant factors in determining whether to employ a roadblock.

H. Termination of Pursuit

The pursuing officer must, at all times, use his best judgement in evaluating and reevaluating the case to determine whether continuing the pursuit is justified.

A pursuit should be abandoned when:

1. Ordered by a superior officer to immediately terminate, or

2. The pursuing officer determines that the pursuit is not justified because the level of danger created by the pursuit begins to exceed the necessity of an immediate apprehension, or

3. Roadway and/or traffic conditions indicate thee futility and the risk of a continued pursuit, or

4. The location of the pursued vehicle is no longer known to the pursuing units, or

5. The pursuing officer realizes or has reason to believe that the fleeing vehicle is operated by a juvenile who has merely committed a motor vehicle violation or a minor offense and the safety factors involved are obviously greater than the juvenile can cope with in a high speed chase.

CONCLUSION

As stated throughout, the primary goal of these Guidelines is to assist law enforcement officers in executing those daily duties inherent in their office with respect to the operation of their Authorized Law Enforcement Emergency Vehicles.

It is expected that each law enforcement officer who operates an Authorized Law Enforcement Emergency Vehicle become thoroughly familiar with these Guidelines as well as the applicable law as set forth in Title 39, the law pertaining to the use of force in law enforcement (N.J.S.A. 2C:3-7) and the 1984 New Jersey Prosecutor's Manual, Chapter 18. Moreover, it is mandated that each law enforcement officer always put safety first, and ensure that whenever engaged in the operation of an Authorized Law Enforcement Emergency Vehicle, such operation is with reasonable due regard for the safety of the public whom he or she is sworn to protect.

EFFECTIVE DATE

These guidelines shall be effective as of Monday, December 23, 1985.

For the Attorney General of New Jersey:

Donald R. Belsole, Director
Division of Criminal Justice

DATED: 20 Dec 85

For the County Prosecutors:

Joseph A. Falcone, President
County Prosecutors Association

DATED: Dec. 20, 1985

SUNSHINE LAW

Assistant Prosecutor Charles P. Sandilos
Mercer County Prosecutor's Office

The Open Public Meetings Act (Act), N.J.S. 10:4-6 et seq., applies to gatherings of any public body "organized by law" and "collectively empowered as a multi-member voting body to spend public funds or affect persons' rights," provided that the gathering qualified as a "meeting" under the law and does not fall within any of the law's exceptions. Witt v. Gloucester County Board of Chosen Freeholders, 94 N.J. 422, 430 (1983) (citing N.J.S. 10:4-7; N.J.S. 10:4-8a; -8b; -9; N.J.S. 10:4-12).

To be covered by the Act's provisions, a gathering "must be open to all the public body's business," N.J.S. 10:4-7, defined as "all matters which relate in any way, directly or indirectly, to the performance of the public body's functions or the conduct of its business." N.J.S. 10:4-8c. The type of "public body" contemplated by the Act is one "organized by law and collectively empowered as a mult-member voting body to spend public funds or affect [a] person's rights." Woodbury Times v. Gloucester City Sewerage Authority, 151 N.J. Super. 160, 163 (Law Div. 1977) (quoting N.J.S. 10:4-7), aff'd, 158 N.J. Super. 448 (App. Div. 1978). An informal or purely advisory board with no effective authority is not covered by the Act. Id. at 163. Thus, the purpose of the Act is to promote the public's confidence in the

public bodies which govern them. Accardi v. Mayor and Council of North Wildwood, 145 N.J. Super. 532, 541 (Law Div. 1976).

Another purpose of the Act is to ensure the right of "citizens to have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in anyway..." Witt v. Gloucester County Board of Chosen Freeholders, 94 N.J. at 432 (quoting N.J.S. 10:4-7). N.J.S. 10:4-8 defines adequate notice as a written notice given 48 hours in advance of the meeting with information as to time, date, location and agenda of the meeting. If, however, annual notice is given as to all meetings pursuant to N.J.S. 10:4-18, no further notice need be given. The publication of an agenda is required only in those instances where no annual notice has been provided in accordance with N.J.S. 10:4-18. See Witt v. Gloucester County Board of Chosen Freeholders, 94 N.J. at 432-433.

A public agency may hold an emergency meeting in order to deal with matters "of such urgency and importance that a delay for the purposes of providing adequate notice would be likely to result in substantial harm to the public interest..." N.J.S. 10:4-9b(1); see also, Dunn v. Mayor and Council and Clerk of Laurel Springs, 163 N.J. Super. 32, 35 (App. Div. 1978) (citing Attorney General Formal Opinion No. 29 (1976) at 8, holding that an emergency must be a "crisis."); Jenkins v. Newark Board of Education, 166 N.J. Super. 357 (Law Div.) aff'd, 166 N.J. Super. 300 (App. Div. 1979). An emergency meeting called by a public agency must limit discussion and action taken to the urgent

matter. N.J.S. 2C:10-9b(2). N.J.S. 10:4-9b(3) provides for a relaxation of the notice requirement in emergency situations. Moreover, an emergency meeting may only be held where:

> either (a) the public body could not reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided; or (b) although the public body could reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided, it nevertheless failed to do so.

N.J.S. 10:4-9b(4). Thus, in emergency situations the Act allows for "narrow exceptions to the law..." Polillo v. Deene, 74 N.J. 563, 578 (1977).

N.J.S. 10:4-10 provides that at the commencement of every meeting of a public body the person presiding is to announce publicly that adequate notice of the meeting was provided specifying the time, place and manner notice was provided. In the case where an emergent matter arises and adequate notice is not provided, the person presiding must state the reason adequate notice was not provided as set forth in N.J.S. 10:4-10b.

N.J.S. 10:4-12 provides that a public body may hold a closed session to discuss any of the following:

1. matters rendered confidential by Federal law or that, if publicly disclosed, would impair the receipt of Federal funds;
2. matters rendered confidential by State statute or court rule;
3. material that would constitute an unwarranted invasion of individual privacy if disclosed. (Generally, to fall within this exception, the material would have to identify a specific individual and be of a personal nature. The individual whose privacy is concerned may require an open session.);
4. the terms and conditions of an existing or proposed collective bargaining agreement, including negotiation positions;

5. matters related to the purchase, lease or acquisition of real property with public funds;
6. matters related to the setting of banking rates or the investing of public funds, provided that public disclosure could adversely affect the public interest;
7. tactics and techniques utilized in protecting the safety and property of the public, provided that public disclosure could impair such protection;
8. investigations of violations or possible violations of the Law;
9. pending or anticipated litigation or contract negotiations in which the public body is or may become a party;
10. matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer;
11. quasi-judicial deliberations occurring after a public hearing that may result in the imposition of a civil penalty or the suspension or loss of a license or permit;
12. personal matters concerning the employment of a current or prospective employee of the public body except when all employees who's rights could be adversely affected request that such matter be discussed at a public meeting.

N.J.S. 10:4-15a provides that action taken that is not in compliance with the Act makes the action null and void. See Precision Industrial Design Co. v. Beckwith, 185 N.J. Super. 9, 14 (App. Div.) (holding that a public agency's failure to comply with N.J.S. 10:4-10a rendered a resolution, null and void), certif. denied, 91 N.J. 545 ((1982). The Act, however, does allow a public body the opportunity to correct or remedy de novo, governmental action done in violation with the Act, thus, allowing conformity with the Act. See N.J.S. 10:4-15a; Jamison v. Morris School District Board of Education, 198 N.J. Super. 411, 417 (App. Div. 1985). N.J.S. 10:4-15b permits any person to institute a proceeding challenging any action taken by a public body that is in violation of the Act. A person has 45 days to institute a

proceeding from the date it is made public that such action was taken. Failure to raise the issue in 45 days will be considered out of time to sustain a challenge. See N.J.S. 10:4-15a; Edgewater Park v. Edgewater Park Housing Authority, 187 N.J. Super. 588, 603 (Law Div. 1982).

N.J.S. 10:4-16 and 10:4-17 provide that citizens may seek equitable or legal remedies against a public board that violates the Act. Furthermore, citizens may complain to the County Prosecutor or Attorney General about possible violations of the Act and the Prosecutor or Attorney General may seek enforcement of the penalty section against any person who knowingly violates the Act. N.J.S. 10:4-17 provides for fine of $100.00 and $500.00 for any subsequent offenses. The enforcement of the penalty by the State is by a summary proceeding under the "Penalty Enforcement Law," N.J.S. 2A:58-1 et seq. The procedure for filing an action to enforce the penalties can be found in R. 4:70-1 et seq. The County Prosecutor or Attorney General may refer the matter to the Public Advocate for whatever action the Public Advocate would deem appropriate in the matter.

When the County Prosecutor or Attorney General receives a complaint alleging a violation of the Act, the decision of whether to file such a complaint or to dispose of the matter in some other fashion, including referral to the Public Advocate, should be made on a case-by-case basis after an appropriate investigation to determine the pertinent facts.

Most allegations regarding violations of the Open Public Meetings Act are made by members of the public or members of

public bodies (or in some cases by a media representative who has been excluded from the meeting), who either telephone or write to the Prosecutor or Attorney General. In either event, the complainant should be required to put in writing the facts which he or she feels constitute a violation. An appropriate person should then conduct an investigation, interviewing the persons involved and checking into whether or not the requirements of the Act have been met, or whether an exception to the requirements is applicable. Once the inquiry is completed, a decision regarding the disposition of the matter should be made in conjunction with the legislative findings and declarations set forth in N.J.S.A. 10:4-7. Since many of the public bodies about which complaints are received are political bodies, special care should be taken to avoid even the appearance of the Prosecutor or Attorney General supporting one side or the other to the controversy. Whether the matter is disposed of by the filing of a complaint, the finding of no violation or in any other fashion, the manner of disposition should be made public.

USE OF FORCE, INCLUDING DEADLY FORCE, BY LAW ENFORCEMENT OFFICERS

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But for Chapter 3 of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:3-1 to 2C:3-10, law enforcement officers' use of force would, in many instances, constitute an offense and subject them to criminal liability. See, e.g., N.J.S.A. 2C:11-3; N.J.S.A. 2C:12-1. Chapter 3 provides defenses to criminal liability. This section discusses the basic principles of that Chapter and then its particular rules. The approach is designed to facilitate comprehension of the seemingly endless collection of detailed provisions that comprise Chapter 3.

In some instances the general principles stated here are more restrictive than the particularized rules stated in Chapter 3. This approach is taken because the section is designed to provide guidance that will lead officers to use only clearly acceptable force. The section is not designed as a guide on when or how to prosecute law enforcement officers who employ force. With this purpose in mind, the general principles stated here authorize force where it would be consistent with the Code and the more restrictive constitutional standards stated in Tennessee v. Garner, 471 U.S. 1 (1985).

This section concludes with an outline, which is adapted from the "Use of Force Standard Operating Procedures" distributed to

State Troopers. This outline is designed for distribution to officers in training. It details the Code's particularized rules, but those rules are stated in light of the limitations suggested by Garner.

CIVIL VERSUS CRIMINAL LIABILITY

A law enforcement officer who has a Chapter 3 defense to criminal liability does not necessarily have a defense in a civil action. Section 2C:3-2 provides that "fact that conduct is justifiable under this chapter does not abolish or impair a remedy ... which is available in any civil action." N.J.S.A. 2C:3-2b. thus, civil law standards -- such as the constitutional limitations on the use of force to effect an arrest that was set in Tennessee v. Garner, 471 U.S. 1 (1985) -- may lead to civil liability despite the fact that the conduct is not criminal because it is justified under Chapter 3. It cannot be too strongly stressed, however, that civil law standards cannot expand criminal liability by restricting the scope of Chapter 3 defenses. Chapter 3, not Tennessee v. Garner, 471 U.S. 1 (1985), controls criminal liability in this State, and there should be no criminal charges for conduct that is justified under the provisions of Chapter 3.

Federal criminal and civil prosecutions for civil rights violations are a different matter; one that is not addressed here.

THE NATURE OF JUSTIFICATION DEFENSE

Justification defenses, unlike the defense of duress, intoxication, entrapment and mental illness, look not to the

particular offender but to the conduct of the offender seeks to justify. See N.J.S.A. 2C:3-1b, 2 Final Report of the New Jersey Criminal Law Revision Commission (1971) at 79 (hereinafter cited as Commentary). These defenses are unique because they describe situations where the use of force against another person is proper. Such conduct is usually punished, not condoned. See, e.g., N.J.S.A. 2C:11-2 and 2C:12-1. Justifications defenses are the exception to the normal rule. Currently each justification defense is generally defined in light of this balance: when do aggression and intrusion warrant, i.e., lead to the permissibility of, a response of force or deadly force. In short, when does the Legislature want to permit, rather than prohibit, conduct that it would otherwise punish as assault or homicide, etc.

THE STRUCTURE OF JUSTIFICATION DEFENSES

Currently, the Code permits force and deadly force when such force is necessary to prevent certain harms due to unlawful force and when the force used is not significantly greater than, i.e., is proportionate to, the unlawful force threatened. Thus, each justification defense has three distinct requirements: (1) conditions that trigger the defense; (2) a necessity requirement; and (3) a proportionality requirement.

TRIGGERING CONDITIONS: LAW ENFORCEMENT OFFICERS

Permission for a law enforcement officer to use force is triggered by any one of the following: (One) when the officer is making what he reasonably believes to be a lawful arrest, N.J.S.A. 2C:3-7a.; (Two) when the officer is preventing certain crimes, N.J.S.A. 2C:2C:3-7b.(2)(d)(ii); N.J.S.A. 2C:3-7e., and (Three)

when the officer is preventing an escape, N.J.S.A. 2C:3-7b.(2)(d)(iii) and N.J.S.A. 2C:3-7c. In addition, officers are not deprived of the rights available to every other citizen, including the right of self-defense. Officers may act to protect themselves or others from use of unlawful force, N.J.S.A. 2C:3-4a.; N.J.S.A. 2C:3-5a., and they may act to protect property against trespass and unlawful damage, N.J.S.A. 2C:3-6. Indeed, officers who are attacked while in the process of properly performing their duties need not retreat or desist from their duties and may continue and defend themselves in the process. N.J.S.A. 2C:3-4b.(2)(b)(ii).

A reasonable belief in the existence of one of the triggering conditions suffices to establish the right to take some action. For example, if an officer reasonably believes that he is preventing an escape, he may act. If it later appears that the person was not escaping, he will be entitled to a defense. In this context, arrests without a warrant present a special problem. A reasonable belief in a "lawful arrest" is necessary, but it is not always enough. N.J.S.A. 2C:3-7a. An officer may not make a mistake about the law of arrest or the law defining crimes. N.J.S.A. 2C:3-9a. The officer's belief about the law must be correct, not just reasonable. Thus, the officer is permitted a reasonable mistake about the facts, for example whether the arrestee broke into a building. However, he is not permitted a reasonable mistake about the law, for example, whether jaywalking is an offense or whether he may make a warrantless arrest for a disorderly persons offense not committed in his presence. N.J.S.A. 2C:3-9a.; cf. N.J.S.A. 2C:3-7b.(1)(b) (where the arrest

is pursuant to warrant, the warrant must be valid or the officer must reasonably believe it is).

NECESSITY

If an officer uses force, the statute provides that it will only be justified if it is "immediately necessary." This necessity requirement has two aspects. It governs both the "time" for force and the "amount" of force. The procedures specified for executing an arrest can be explained as derived from this requirement. N.J.S.A. 2C:3-7b.(1)(a). This section states: "The actor [may not use force unless he] makes known the purposes of the arrest or reasonably believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested ..." In short, unless such notice is given to the arrestee when feasible, there is no basis for concluding that force was necessary. Necessity also governs the amount of permissible force. When the officer uses force, the officer must "reasonably believe that such force is immediately necessary." N.J.S.A. 2C:3-7a.e. The police is to avoid force where other alternatives are available and, where force is necessary, to use the least harmful amount of force.

In sum, the Code only justifies force when and to the extent that such force is necessary. The Code prohibits the use of force by any one, including the police, unless the force used is necessary to prevent harm resulting from unlawful force. If an officer can effect an arrest by commanding a suspect to surrender the threatening force but shoots the suspect instead, he will be using excessive force and will be liable to a criminal charge.

PROPORTIONALITY

Proportionality imposes further limits on the use of force and deadly force to prevent unlawful harm. For example, while deadly force may be necessary to effectuate an arrest to prevent theft, it is nonetheless excessive force because it is disproportionate. The Legislature has authorized the use of deadly force, force which the actor knows a "substantial risk of causing death or serious bodily harm," N.J.S.A. 2C:3-11b., only where the actor avoids a threat of nearly equal severity. This policy, limiting and expanding the permissible force depending upon the severity of the unlawful threat, is generally reflected in each justification defense.

With respect to law enforcement officers, the proportionality requirement explains the detailed provisions of N.J.S.A. 2C:3-7b.(2)(b)-(d) and c. Deadly force may not be employed where it will create a greater harm, for example, the risk of injury to innocent bystanders. N.J.S.A. 2C:3-7b.(2)(b). It may only be employed to effect an arrest for or prevent escape from serious crimes that usually involve serious injury or the risk of serious injury. N.J.S.A. 2C:3-7b.(2)(c)-(d). And, it may be employed to prevent the escape of an incarcerated person since this presents a life endangering situation. N.J.S.A. 2C:3-7c.

THE REASONABLE BELIEF STANDARD

With the exception of mistakes of law discussed in the subsection entitled triggering conditions, it is important to recognize that an officer will always be judged on the basis of his reasonable belief. A reasonable belief is one which the actor

is not reckless or criminally negligent in holding. N.J.S.A. 2C:1-14j. Thus, under the Code, an officer's belief is reasonable unless his failure to assess a situation properly, under the circumstances known to him, is "a gross deviation from the standard of care that a reasonable person would observe in [his] situation." N.J.S.A. 2C:2-2b.(4). For example, an officer who is confronted with a suspect who aims a gun at him need not stop to find out if that gun is loaded: a reasonable person in the same situation would not do so, and certainly, a failure to do so is not a gross deviation from the conduct of a reasonable person.

In sum, the reasonable belief standard gives an officer presented with a threat the leeway necessary for the amount of force required to repel that threat in the context of the situation in which he finds himself -- often an emergency. The officer's actions are assessed in light of the circumstances known to him from the point of view of a person in his situation. If an officer's assessment of and reaction to the threat is not a gross deviation from the standard of care of the reasonable person, the officer's conduct is justified.

USE OF FORCE, INCLUDING DEADLY FORCE, BY LAW ENFORCEMENT OFFICERS:

I. INTRODUCTION

A. This outline expresses State policy on and serves as a guide concerning the use of force in law enforcement. It incorporates the essence of laws and basic training courses concerning the use of force by officers in the performance of their duties.

B. As defined in N.J.S.A. 2C:3-11, "deadly force" means force which the officer uses with the purpose of causing or which the officer knows to create a substantial risk of causing death or serious bodily harm. Purposely firing a firearm in the direction fo another person or

at the vehicle, building or structure in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the purpose is limited to creating an apprehension that the officer will use deadly force if necessary, does not constitute deadly force.

C. Non-deadly force means physical force other than deadly force.

D. As defined in N.J.S.A. 2C:3-11, "serious bodily harm" means bodily harm which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ or which results from aggravated sexual assault or sexual assault.

II. POLICY

A. Officers should employ force in the performance of their duties only to the degree and in the manner provided by law and consistent with the provisions of the New Jersey Code of Criminal Justice. N.J.S.A. 2C:3-1 to 2C:3-10.

B. Warning shots by officers performing their duties are not authorized.

COMMENT

Officers have special legal authority to use force and deadly force in certain situations subject to limitations. Notwithstanding this authorization, they are under a duty to employ extraordinary care in the handling of firearms and other deadly weapons. It is essential that each officer exercise sound judgment and act reasonably under all circumstances where any force is applied. Given the existence of the requisite legal conditions, an officer should resort to deadly force only when immediately necessary and only after less drastic alternatives have been exhausted or are reasonably believed to be ineffective in light of the prevailing circumstances.

While the specific rules and limitations that follow give the appearance of a collection of unrelated details, there are general principles that explain the rules. Use force only when and to extent necessary and use only force that is reasonable in relation to the harm you seek to prevent.

III. MECHANICS

A. Use of Non-Deadly Force (In some of these circumstances the use of deadly force may also be authorized; see B below.)

1. Officers are justified in using non-deadly force in the performance of their duties when they reasonably believe the force employed is immediately necessary to:

a. Protect themselves or others against the use of unlawful force by another person, or

b. Prevent another from committing suicide or inflicting serious bodily harm upon himself/herself, or

c. Thwart the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, or

d. Prevent an escape, or

e. Effect an arrest for any offense or crime under the laws of the State of New Jersey.

2. The use of force (deadly or non-deadly) to effect an arrest, however, is not justifiable unless:

a. Officers make known the purpose of the arrest or reasonably believe that their identity and purpose are otherwise known by or cannot reasonably be made known to the person to be arrested; and

b. When the arrest is made under a warrant, the warrant is valid or reasonably believed by the officer to be valid; or

c. When the arrest is without a warrant, that the arrest is lawful.

B. Use of Deadly Force

Officers are justified in using deadly force in the performance of their duties only in the following situations and subject to the following limitations consistent with the provisions of the New Jersey Code of Criminal Justice:

1. Self Defense

When officers reasonably believe that deadly force is necessary to protect themselves against death or serious harm.

COMMENT

Officers, when justified in using force, are not obliged to desist because resistance is encountered or threatened. They may not only stand their ground but may also press forward to achieve a lawful objective, overcoming force with force.

2. Defense of a Third Person

When officers reasonably believe that their intervention is necessary to protect another against death or serious bodily harm, except that deadly force is not justifiable:

a. If the officer can otherwise secure the complete safety of the protected person (unless the person whom he is defending is in his own home, and the attacker is not a resident); or

b. Where it reasonably appears to officers that the person they seek to protect has unlawfully, with the purpose of causing death or serious bodily harm, provoked the use of deadly force against himself in the same encounter.

3. Prevention of Crime

When, in the course of effecting an arrest, officers reasonably believe that:

a. Deadly force is necessary to prevent the following crimes:

(1) MURDER, AGGRAVATED MANSLAUGHTER, or MANSLAUGHTER (2C:11-3 and 2C:11-4)

(2) KIDNAPPING (2C:13-1)

(3) ARSON (2C:17-1)

(4) ROBBERY (2C:15-1)

(5) BURGLARY OF A DWELLING (2C:18-2)

(6) SEXUAL ASSAULT or AGGRAVATED SEXUAL ASSAULT (2C:14-2)

(7) AGGRAVATED CRIMINAL SEXUAL CONTACT (2C:14-3);

AND

b. The person whom they seek to prevent from committing a crime will endanger human life or inflict serious physical injury upon another unless the commission or the consummation fo the crime is prevented;

AND

c. The use of deadly force presents no substantial risk of injury to innocent persons;

Notwithstanding the provisions of N.J.S.A. 2C:3-7b(2)(c) and N.J.S.A. 2C:3-7e, the use of deadly force, by officers, to prevent:

(1) DEATH BY AUTO (2C:11-5), or

(2) CRIMINAL SEXUAL CONTACT (2C:14-3b)

IS NOT AUTHORIZED.

4. Arrest - Escape from Custody

a. When, subject to the Section II and paragraph A(2) and paragraph B(4)(b) of Section III of this guide, officers reasonably believe that

(1) Deadly force is necessary to effect an arrest of, or prevent the escape of a person who has committed or has attempted to commit the following crimes:

(A) MURDER, AGGRAVATED MANSLAUGHTER or MANSLAUGHTER (2C:11-3 and 2C:11-4)

(B) KIDNAPPING (2C:13-1)

(C) ARSON (2C:17-1)

(D) ROBBERY (2C:15-1)

(E) BURGLARY OF A DWELLING (2C:18-2)

(F) SEXUAL ASSAULT or AGGRAVATED SEXUAL ASSAULT (2C:14-2)

(G) AGGRAVATED CRIMINAL SEXUAL CONTACT (2C:14-3a), and

b. When officers reasonably believe that the force involved creates no substantial risk of injury to innocent persons; and

c. When officers reasonably believe that:

(1) There is an imminent threat of deadly force to officers or to a third party; or

(2) The use of deadly force is necessary to thwart the commission of one of the listed crimes and the person has inflicted or threatened the infliction of serious bodily injury; or

(3) The use of deadly force is necessary to prevent an escape or flight from arrest for a crime as set forth in this section and

(a) there is an imminent threat of serious bodily injury to officers or a third person, or

(b) the person has committed a crime involving infliction or threatened infliction of serious bodily injury.

(c) Notwithstanding the provisions of N.J.S.A. 2C:3-7b(2)(c) and the foregoing, the use of deadly force by officers to effect an arrest or to prevent an escape from custody for the crimes or attempts to commit the crimes of:

(1) DEATH BY AUTO (2C:11-5), or

(2) CRIMINAL SEXUAL CONTACT (2C:14-3b)

IS NOT AUTHORIZED.

5. Escape from Officers' Detention

When a person attempts to escape after arrest but prior to commitment to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense, only if officers would have been justified in using deadly force to effect the arrest.

6. Escape from Commitment

When officers reasonably believe that deadly force is necessary to prevent the escape of a person committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense, provided that the officers believe that the force employed creates no substantial risk of injury to innocent persons.

C. Overlapping Justifications

Justifications for the use of any force in specific situations (e.g., self-defense, defense of others, effecting an arrest, etc.) are not mutually exclusive. There will be situations where the justifications overlap. The fact that the use of deadly force may not be warranted under a particular justification (e.g., to effect an arrest or to prevent an escape of a disorderly persons offender, etc.) does not mean that an officer who is lawfully effecting the arrest of a disorderly persons offender cannot use deadly force in self-defense.

Similarly, officers may be warranted in acting under more than one justification, provided that the requirements of both justifications are met. Thus, officers effecting an arrest for kidnapping may be justified in using deadly force either to effect the arrest, or in self-defense, or both.

POLICY ON REFERRALS FROM THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Prosecutor James W. Holzapfel
Ocean County Prosecutor's Office

The Office of the Ombudsman for the Institutionalized Elderly was established in 1977 pursuant to N.J.S. 52:27G-1 et. seq. The office is charged with the duty of "promoting, advocating and insuring as a whole and in particular cases, the adequacy of the care received and the quality of life experience, by elderly patients, residents and clients of facilities within the state."

The Office of the Ombudsman investigates and develops cases concerning physical and mental abuse of the institutionalized elderly. This abuse takes many forms including assaults and batteries, inadequate care and feeding, outright neglect and misappropriation of patient's funds.

The Ombudsman has the power to watch over public and private facilities which provide health and health-related services to persons over 60, and which are subject to regulations, inspection or supervision by any government agency. These include, but are not limited to, nursing homes, skilled nursing homes, intermediate care of extended care facilities, convalescent homes, rehabilitation centers, homes for the aged, special hospitals, mental retardation facilities, and mental care centers.

The law requiring the reporting of all cases of suspected abuse and exploitation of institutionalized elderly persons to the Office of the Ombudsman was signed by Governor Thomas H. Kean on

January 27, 1983. This law and the administrative code rules implementing the same are now fully in effect. Some of the administrative code rules were due to expire in June, 1988, but an executive order extended their expiration date. See N.J.A.C. 5:100-2.

N.J.S. 52:27G-7.1, specifically requires that all persons, who as a result of information obtained in the course of their employment, reasonably suspect or believe that an institutionalized elderly person is being or has been abused or exploited, report that information to the Office of the Ombudsman for the Institutionalized Elderly. Examples of persons required to report include caretakers, social workers, physicians, registered or licensed practical nurses, and any other person performing services in the facility.

Confidentiality and immunity from civil and criminal liability are provided for the protection of the individual reporting the incident. If, however, the person reporting the incident acted in bad faith or with a malicious purpose then no immunity from civil or criminal liability will be granted. Failure to report as required subjects the individual to a maximum penalty of $5000. Each violation of the act constitutes a separate offense. In the event that a person is penalized, the court is required to send a letter to the licensing authority or the professional board, if any, having jurisdiction over the person penalized.

Since complaints received by the Office of the Ombudsman in many instances deal with criminal matters, a policy on referrals

from the Office of the Ombudsman to the proper authorities has been developed.

Pursuant to N.J.S. 52:27G-7, referrals will be made on the following basis:

> b. When the office receives a complaint or otherwise encounters a deficiency that pertains to compliance with State or Federal laws or regulations or rules administered by any government agency, it shall make referral thereof directly to the appropriate government agency for action.
>
> c. When the complaint received or the investigation conducted by the office discloses facts that it determines warrants the institution of civil proceedings by a government agency against any person or government agency, the matter shall be referred to the government agency with authority to institute such proceedings.
>
> d. When the complaint received or the investigation conducted by the office reveals information in relation to the misconduct or breach of duty of any officer or employee of a facility or a government agency, it shall refer the matter to the appropriate authorities for such action as may be necessary.
>
> e. When the complaint received or the investigation conducted by the office discloses information or facts indicating the commission of criminal offenses or violations of standards of professional conduct, it shall refer the matter, as appropriate, to the Attorney General, county prosecutor, or any other law enforcement official that has jurisdiction to prosecute the crime, or the professional licensing board concerned.

Pursuant to N.J.S. 52:27G-7f, when a referral is received by a government agency, prosecuting agency or professional licensing board, a report is to be filed within 30 days with the Office of the Ombudsman indicating any findings and actions with respect

to the referral, and every 30 days thereafter an additional report is to be filed until a final action has been taken.

The Office of the Ombudsman may be contacted by writing to: The Office of the Ombudsman for the Institutionalized Elderly, C.N. 808, Trenton, New Jersey 08625; or by calling: 800-624-4262.

TRANSPORTATION OF STATE MENTAL INSTITUTION INMATES TO CRIMINAL COURT APPEARANCES

Assistant Prosecutor Gregory Smith
Camden County Prosecutor's Office

Prior to 1980 the Department of Human Services was responsible for providing transportation and security in all cases involving mental hospital residents scheduled to make criminal court appearances, even if the resident had been transferred from a State or County Correctional Facility for treatment. This raised the potential for serious security problems in the event the resident was an escape risk because the Department of Human Services personnel were not armed.

The fears raised by the prior arrangements came to fruition in a well publicized escape in Mercer County. In that case a Trenton State Prison inmate, serving sentences for armed robbery and escape, as well as under indictment for an attack upon another inmate, attempted suicide and was transferred to the Forensic Unit at Trenton Psychiatric Hospital. He then contacted the Mercer County Criminal Assignment Judge expressing his desire to appear in court and enter a guilty plea to the pending indictment. The judge directed the prosecutor to make the necessary arrangements to bring the defendant to court. The prosecutor, aware of defendant's prior criminal record for crimes of violence and escape, alerted the Department of Corrections to the defendant's scheduled court appearance hoping that adequate security would be provided. The Department of Corrections disclaimed responsibility

for defendant's transportation because of his status as a mental institution resident, notwithstanding his underlying status as an inmate of a correctional institution. The Department of Human Services had to provide for defendant's transportation.

The defendant was transported to court in handcuffs by two unarmed hospital attendants. Defendant feigned ignorance of the purpose for his court appearance. After being led from the courtroom he broke away from his guards and disappeared into a nearby housing complex. He was unable to be located despite a lengthy search of the area.

The circumstances of this incident created a strong suspicion that the escape was carefully planned. This raised the fear that other prisoners would learn of the lax security attending the transportation of mental institution inmates, thereby tempting them to attempt a similar escape.

As a result of this incident new procedures have been implemented for the transportation of State Mental Institution inmates to criminal court appearances.

I. The Department of Human Services will no longer transport mental patients to criminal court appearances.

II. The Department of Corrections will be responsible for the transportation and security for mental institution inmates who would otherwise be serving custodial sentences in State Correctional Facilities.

III. In cases involving mental institution inmates who would otherwise be confined in a County Correctional Facility (either awaiting trial or serving a custodial sentence) transportation and security is the responsibility of the Sheriff of the County in which the inmate's appearance is required.

IV. In cases involving mental institution inmates who were serving State Prison sentences but were being held in County Correctional Facilities, the responsibility for transportation and security is negotiable between the Department of Corrections and the appropriate County Sheriff. If the Sheriff provides for transportation and security, the Department of Corrections reimburses the County for its expense. In these cases, one should make sure it is understood who will be providing the necessary transportation and security.

On the following page is a Department of Corrections memorandum regarding the transportation of persons housed in the Vroom building. This memorandum is still in effect.

DEPARTMENT OF CORRECTIONS

INTER - OFFICE COMMUNICATION

TO Richard A. Seidl
Assistant Commissioner

DATE February 8, 1980

FROM William H. Fauver
Commissioner

SUBJECT Transportation of Department of Corrections' Inmates Housed in Vroom, Trenton Psychiatric Hospital

As the result of a recent meeting held in Tim Carden's office involving Commissioner Klein, Deputy Attorney General G. Michael Brown, Harvey Musikoff and myself, it was agreed that the Department of Corrections would be responsible for transporting the department's inmates housed in the Vroom forensic section. I am advising you of the conditions that should be met surrounding this transportation and that you should advise Mr. Hargis that only under these conditions has the department agreed to be responsible for transportation.

1. The agreement is that the Department of Corrections' inmates will be transported to court by correction officers. An arrangement should be made with the hospital to insure that we are advised at least 24 hours in advance of the necessary transportation.

2. The transportation will be done under the security procedures that the Department of Corrections uses for transportation of maximum security inmates. There are to be no exceptions to this requirement.

3. If there is any reason for the hospital administration to believe that the inmates/patients will exhibit acting-out behavior during the court trip, a medical security officer should also be assigned, not for custody but for immediate response to the inmate under those conditions.

4. Other than court appearances the only reason the Department of Corrections would be involved in transportation would be for medical purposes. The Department's responsibility in medical cases would be strictly transportation. If the inmate/patient is admitted to a hospital, the responsibility of coverage during the stay in the hospital would not be a responsibility of the Department of Corrections.

5. Accurate records of the correction officers' time must be maintained so that the Department of Human Services can be debited and credited for transportation costs.

WHF:pag

cc: Tim Carden

cc [illegible] 20-4

REFERRAL OF INSTITUTIONAL INFRACTIONS

Assistant Prosecutor Abraham J. Chasnoff
Middlesex County Prosecutor's Office

All institutional infractions are adjudicated at correctional facilities by disciplinary hearing officers who impose administrative sanctions, including loss of "good time," for violations. Those infractions which constitute disorderly or petty disorderly persons offenses should not be referred to the County Prosecutor. Instead, these complaints should be filed in the appropriate municipal court in accordance with existing procedures. In this regard, it must be noted that the act of bringing contraband, other than a controlled dangerous substance (cf. N.J.S.A. 2C:35-5a) or an implement of escape to a prisoner, is now classified as a petty disorderly persons offense under N.J.S.A. 2C:29-6b.

Any indictable offense emanating from a correctional institution, whether committed by an inmate or by a visitor, must be referred to the County Prosecutor. When either the victim, the defendant or a critical witness to an offense is an inmate, the entire disciplinary record of the individual should be reviewed and taken into consideration, including any disciplinary proceedings related to the incident in question. An effort should be made to insure that all relevant reports are obtained from the correctional institution. Depending on the location within the institution at which the incident occurred, several different reports may have been prepared by officers located within the

vicinity, or by officers who were summoned to respond to the problem and provide additional assistance. All reports should be requested and reviewed.

All requests for supplemental information should be directed to the superintendent of the parent correctional institution, even if the incident occurred at a satellite unit, such as a farm unit or camp. If in doubt as to the parent institution of a satellite facility, the Deputy Commissioner of the Department of Corrections should be contacted for assistance.

It should always be kept in mind that, while simple assaults upon law enforcement officers, persons engaged in medical services or teachers may constitute aggravated assaults under N.J.S.A. 2C:12-1b(5), not all personnel employed within the institution are similarly protected; e.g. clerical staff, disciplinary hearing officers, social service workers, parole board members. The reviewing assistant prosecutor should be alert to these situations and consider the availability and appropriateness of such provisions as N.J.S.A. 2C:39-9, contempt; or N.J.S.A. 2C:13-2, criminal restraint, among others.

EVIDENCE RECORDS RETENTION AND DESTRUCTION SCHEDULE

Assistant Prosecutor Francis D. Falivena, Jr.
Essex County Prosecutor's Office

During the fall of 1983, a committee appointed by the Association completed a revision of the 1966 Evidence Records Retention and Destruction Schedule. The revision was later approved by both the Association and the Bureau of Archives and History of the New Jersey State Library.

The committee, which was composed of persons concerned with records retention in several Prosecutors Offices throughout the State, sought a revision which would address the growing shortage in records storage space, which most Prosecutors Offices were experiencing. The guiding principle upon which rested the several major changes in time periods was that most of the records retained by the County Prosecutors Office are also retained in other places by both agencies for longer periods of time. The second principle was the process of microfilming, which is becoming increasingly available to law enforcement agencies.

The following schedule is a duplicate of the revised schedule approved in 1983. Disregard the superseded stamp. No proposed changes have as yet received final approval for incorporation into the schedule. Proposed changes, which have been directed from several counties to the Archives and Records Management Division of the Department of State, are reflected on the schedule.

Proposed changes would affect Items 1-00, 6-00, 12-00, 25-00, and 26-02.

The revised schedule, incorporating all changes, will be forwarded to each County Prosecutor by the Association immediately after the changes are approved.

Bureau of Archives and History
Records Management Section

REQUEST FOR APPROVAL OF RECORDS RETENTION SCHEDULE

SUPERSEDED

CPT# S13-JUD.1

1. AGENCY NO.	2. DEPARTMENT	3. DIVISION	4. BUREAU, OFFICE, ETC.
C310000 999	County		Prosecutors Office

5. AGENCY REPRESENTATIVE	6. TITLE	7. TELEPHONE NO.
James F. Mulvihill	Assistant Attorney General, Chief Prosecutors Supervisory Section	984-0049

8. SCHEDULE APPROVAL

THE RECORDS COVERED BY THIS SCHEDULE, UPON EXPIRATION OF THE RETENTION PERIODS, SHALL BE DEEMED TO HAVE NO CONTINUING VALUE TO THE STATE OF NEW JERSEY AND WILL BE DISPOSED OF AS INDICATED IN ACCORDANCE WITH THE LAW AND REGULATIONS OF THE STATE RECORDS COMMITTEE. THIS SCHEDULE SHALL BECOME EFFECTIVE ON THE DATE APPROVED BY THE STATE RECORDS COMMITTEE.

9. SIGNATURE OF AGENCY REPRESENTATIVE	DATE	10. SIGNATURE OF SECRETARY, STATE RECORDS COMMITTEE	DATE APPRV'D
James F. Mulvihill	11-15-83	William C. Wyse	Sept. 21, 198

11. ITEM NO.	12. RECORD TITLE AND DESCRIPTION	13. AUD (X)	14. RETAIN IN: AGENCY	14. RETAIN IN: RECORDS CTR.	15. DISPOSITION (DESTROY/ ARCHIVES)
1-00.	Appeals from Municipal Court Decisions Including briefs, notice of hearing, correspondence, transcripts, notice of appeal (Subject to final approval, Item) (1-00 will be deleted because it) (is duplicative of Item 14-00.)		Sentence of defendant served plus 1 year; if no custodial sentence, final judgement plus 1 year		Destroy
2-00.	Case Files (Homicide)		Final judgement or sentence served plus 25 years, but if microfilming is available then permanently		

Bureau of Archives History
Records Management Section

REQUEST FOR APPROVAL OF RECORDS RETENTION SCHEDULE

SUPERSEDED

1. AGENCY NO.	2. DEPARTMENT County	3. DIVISION	4. BUREAU, OFFICE, ETC. Prosecutors Office

11. ITEM NO.	12. RECORD TITLE AND DESCRIPTION	13. AUD (X)	14. RETAIN IN AGENCY	14. RETAIN IN RECORDS CENTER	15. DISPOSITI (DESTROY ARCHIVE
3-00.	Correspondence				
3-01.	External (Public)		3 years		Destro
3-02.	Internal (Administrative)		Periodic Review		Destro
3-03.	Policy		Permanent		
3-04.	Routine Requests for Information		Periodic Review		Destro
4-00.	Criminal Appeal Case Files- Municipal Court		1 year		Destro
5-00.	Criminal Appeal Case Files Including but not limited to briefs, transcripts, notice of appeal, appendices, hearing notices, orders and opinions		Sentence of defendant served plus 2 years; if no custodial sentence, final judgment plus 2 years		Destro
6-00.	Defendants Committed to N.J. State Hospitals (Non-Homicide) (Subject to final approval, Item 6-00 will be changed to require: "Retain in...Agency...Closed plus 10 years...Destroy," to be consistant with Item 14-02.		Closed plus 20 years		Destro
7-00.	District Court Case Files (U.S.)		Sentence of defendant served plus 1 year; if no custodial sentence, final judgement plus 1 year		Destr

Bureau of Archives . istory
Records Management Section

REQUEST FOR APPROVAL OF RECORDS RETENTION SCHEDULE

SUPERSEDED

1. AGENCY NO.	2. DEPARTMENT	3. DIVISION	4. BUREAU, OFFICE, ETC.
	County		Prosecutors Office

11. ITEM NO.	12. RECORD TITLE AND DESCRIPTION	13. AUD (X)	14. RETAIN IN		15. DISPOSITION (DESTROY/ ARCHIVES)
			AGENCY	RECORDS CENTER	
8-00.	Docket Books names of defendants, offense(s), Social Security number and date of birth		Permanent		Review fo Archives
9-00.	Employee Records (Personnel files)		6 years after termination of employee		Destroy
10-00.	Employment Applications - (unsuccessful)		3 years		Destroy
11-00.	Evidence Records		Sentence of defendant served plus 1 year; if no custodial sentence, final judgement plus 1 year		Destroy
12-00.	Expunged Files and Records (Subject to final approval, Item 6-00 will be changed to require: "Retain in...Agency...Closed plus 10 years...Destroy," to be consistant with Item 14-02.		Life of the defendant		Destroy
13-00.	Extradition Records				
13-01.	Defendant demanded by other jurisdiction		Closed plus 1 year.		Destroy

SUPERSEDED

Bureau of Archives and History
Records Management Section

REQUEST FOR APPROVAL OF RECORDS RETENTION SCHEDULE

SUPERSEDED

1. AGENCY NO.	2. DEPARTMENT	3. DIVISION	4. BUREAU, OFFICE, ETC.
	County		Prosecutors Office

11. ITEM NO.	12. RECORD TITLE AND DESCRIPTION	13. AUD (X)	14. RETAIN IN		15. DISPOSITION (DESTROY/ ARCHIVES)
			AGENCY	RECORDS CENTER	
13-02.	Defendant demanded from other jurisdiction to NJ		Sentence of defendant served plus 1 year; if no custodial sentence, final judgement plus 1 year		Destroy
14-00.	Grand Jury Case Files - Including complaints, police reports, criminal histories, synopsis sheets and disorderly persons reports				
14-01.	Case file which does not result in an indictment		1 year after Grand Jury decision		Destroy
14-02.	Case file which results in an indictment		Closed plus 10 years		Destroy
15-00.	Grand Jury Calendars (includes copies of daily calendars)		1 year after Grand Jury decision		Destroy
16-00.	Indictments and Accusations		Disposition closed, sentence served or final judgment plus 20 years		Destroy
17-00.	Intelligence Files-Reference Files Summarization of information included in Intelligence Files		Closed plus 5 years		Destroy

ureau of Archives and History
ecords Management Section

EQUEST FOR APPROVAL OF RECORDS RETENTION SCHEDULE

AGENCY NO.	2. DEPARTMENT	3. DIVISION	4. BUREAU, OFFICE, ETC.
	County	SUPERSEDED	Prosecutors Office

ITEM NO.	12. RECORD TITLE AND DESCRIPTION	13. AUD (X)	14. RETAIN IN: AGENCY	14. RETAIN IN: RECORDS CENTER	15. DISPOSITION (DESTROY/ ARCHIVES)
18-00	Investigation Reports All reports and memoranda concerning investigations done by the Prosecutor's Office itself and including all special squad reports (except homicide) which do not result in an indictment or are otherwise not prosecuted or pursued.		Closed plus 5 years		Destroy
19-00	Juvenile Court Case Files		Closed, sentence served or final judgement plus 5 years		Destroy
20-00	Lab Reports - consists of Requests For Examination of evidence and laboratory reports which provides a descriptive analysis of the evidence. Copies are maintained at the local police departments and in the Prosecutor's case files. Another copy is filed separately.				
20-01	Lab Reports - Homicide Case Files		Final judgement or sentence served plus 25 years, but if microfilming is available then permanently		

SUPERSEDED

Bureau of Archives and History
Records Management Section

REQUEST FOR APPROVAL OF RECORDS RETENTION SCHEDULE

SUPERSEDED

1. AGENCY NO.	2. DEPARTMENT	3. DIVISION	4. BUREAU, OFFICE, ETC.
	County		Prosecutors Office

11. ITEM NO.	12. RECORD TITLE AND DESCRIPTION	13. AUD (X)	14. RETAIN IN		15. DISPOSI (DESTRO ARCHI
			AGENCY	RECORDS CENTER	
20-02	Lab Reports - Non-Homicide Case Files		Case closed plus 10 years or sentence served plus 10 years or final judgement plus 10 years		Des
20-03	Lab Reports - additional copies not filed with case files		Periodic Review		Destr
21-00	Ledger Books PROMIS/GAVEL file number, crime class, crime, municipal court, remarks		Permanent		
22-00	Master Index Cards-PROMIS/GAVEL docket number, defendant, offense, judge, identification, complaint, victim, disposition		Permanent		
23-00	Prosecution Case Files (non-homicide)				
23-01	Resulting in an Indictment or Accusation		Closed plus 10 years, or sentence served plus 10 years or final judgement plus 10 years		Destr

Bureau of Archives and History
Records Management Section

REQUEST FOR APPROVAL OF RECORDS RETENTION SCHEDULE

SUPERSEDED

1. AGENCY NO.	2. DEPARTMENT	3. DIVISION	4. BUREAU, OFFICE, ETC.
	County		Prosecutors Office

11. ITEM NO.	12. RECORD TITLE AND DESCRIPTION	13. AUD (X)	14. RETAIN IN		15. DISPOSITION (DESTROY/ ARCHIVES)
			AGENCY	RECORDS CENTER	
23-02.	Resulting in a "No Bill"		Closed plus 5 years		Destroy
23-03.	Resulting in an Administrative Dismissal		Closed plus 5 years		Destroy
23-04.	Resulting in a "No Bill" which is sent back to Municipal Court		Closed plus 5 years		Destroy
23-05.	Resulting in an Administrative Remand of the matter by the Prosecutor to the Municipal court		Closed plus 5 years		Destroy
23-06.	A direct original presentation to the Grand Jury resulting in an in an Indictment		Closed plus 10 years, or sentence served plus 10 years, or final judgement plus 10 years		Destroy
23-07.	A direct original presentation to the Grand Jury resulting in a "No Bill"		Closed plus 5 years		Destroy
24-00.	Section Index Cards Including all special squads in the Prosecutor's Office in addition to Central Records		Permanent		

Bureau of Arc[illegible] History
Records Management Section

REQUEST FOR APPROVAL OF RECORDS RETENTION SCHEDULE

SUPERSEDED

1. AGENCY NO.	2. DEPARTMENT	3. DIVISION	4. BUREAU, OFFICE, ETC.
	County		Prosecutors Office

11. ITEM NO.	12. RECORD TITLE AND DESCRIPTION	13. AUD (X)	14. RETAIN IN: AGENCY	14. RETAIN IN: RECORDS CENTER	15. DISPOSIT (DESTRO ARCHIV
25-00	Statements Consisting of writings signed by parties or witnesses and usually given under oath during the course of investigations conducted by the police, public agency or by the County Prosecutor's Office.		Sentence of defendant served plus 1 year; if if no custodial sentence, final judgement plus 1 year		Dest
	(Subject to final approval, Item 25-00 will be changed to require: "Retain in...Agency...Closed plus 10 years...Destroy," to be consistant with Item 14-02.)				
26-00	Statistical Reports				
26-01	Monthly		1 year		Destr
26-02	Yearly (Superseded)		3 yrs.		Destr
27-00	Wiretap Records				
27-01	Wiretap Tapes (originals)		10 years		Destr
27-02	Transcripts of Intercepted Conversations		Sentence of defendant served plus 1 year; if no custodial sentence, final judgement plus 1 year		Dest
27-03	Requests to Conduct Wiretapping Including reports to Attorney General (4 times a year) and statistical information concerning tapping procedure		1 year after information is incorporated into reports		Destroy

NJDE 707-13 (5/81) NEW JERSEY STATE LIBRARY PAGE

Bureau of Archives and History
Records Management Section

REQUEST FOR APPROVAL OF RECORDS RETENTION SCHEDULE

SUPERSEDED

CPT#
S13-1110.9

1. AGENCY NO.	2. DEPARTMENT	3. DIVISION	4. BUREAU, OFFICE, ETC.
	County		Prosecutors Office

5. AGENCY REPRESENTATIVE	6. TITLE	7. TELEPHONE NO.
James F. Mulvihill	Assistant Attorney General, Chief Prosecutors Supervisory Section	984-0049

8. SCHEDULE APPROVAL

THE RECORDS COVERED BY THIS SCHEDULE, UPON EXPIRATION OF THE RETENTION PERIODS, SHALL BE DEEMED TO HAVE NO CONTINUING VALUE TO THE STATE OF NEW JERSEY AND WILL BE DISPOSED OF AS INDICATED IN ACCORDANCE WITH THE LAW AND REGULATIONS OF THE STATE RECORDS COMMITTEE. THIS SCHEDULE SHALL BECOME EFFECTIVE ON THE DATE APPROVED BY THE STATE RECORDS COMMITTEE.

9. SIGNATURE OF AGENCY REPRESENTATIVE	DATE	10. SIGNATURE OF SECRETARY, STATE RECORDS COMMITTEE	DATE APPRV'D
James F. Mulvihill	11-15-83	William E. Wyzka	Oct. 19, 198

11. ITEM NO.	12. RECORD TITLE AND DESCRIPTION	13. AUD (X)	14. RETAIN IN: AGENCY	14. RETAIN IN: RECORDS CTR.	15. DISPOSITION (DESTROY/ ARCHIVES)
26-02.	Statistical Report - Yearly		3 yrs.		Destroy

IMPLEMENTATION OF PAYTON V. NEW YORK

First Assistant Prosecutor William F. Lamb
Middlesex County Prosecutor's Office

Among the more topical problems confronting law enforcement are those involving arrests made within private residences. In order to ensure the validity of such arrests, arresting officers must be completely familiar with the pronouncements first made by the United States Supreme Court in Payton v. New York, 445 U.S. 573 (1980), and later amplified in Steagald v. United States, 451 U.S. 204 (1981).

In the former decision, the Court restricted police ability to enter private residences in order to make arrests without arrest warrants. The restrictions promulgated in Payton apply to what the Court characterized as "routine felony arrest" situations. This presumably means situations where there is probable cause to make an arrest but where the circumstances do not require that arrest be made immediately. A typical example might involve the arrest of a 40 year old woman with eight children for welfare fraud or the passing of a bad check. In such non-exigent situations, police officers may not enter a private residence in order to make the arrest unless they have first obtained an arrest warrant for the person to be taken into custody. There must also be a reasonable basis to believe that the person named in the arrest warrant will in fact be found within the private residence which they intend to enter.

In analyzing the rule of Payton, it is important to bear in mind those situations to which it does not apply. Nothing in Payton, for instance, precludes the police from making valid warrantless arrests in any public place; it only prohibits the warrantless entry into private residences in order to make an arrest. Nor does Payton proscribe a warrantless entry into private residences where valid consent to enter has been obtained by the arresting officers. Lastly, Payton applies only to non-exigent or "routine felony arrest" situations. If probable cause to arrest exists and circumstances do not provide the time necessary to obtain an arrest warrant (e.g., the typical hot pursuit case), then a valid arrest may be made inside a private residence without an arrest warrant.

In light of the above, the requirements of Payton may be summarized as follows: Absent valid consent to enter or absent circumstances requiring immediate police action, police officers may not enter a private residence in order to make a "routine felony arrest" unless they have first obtained an arrest warrant for the person to be taken into custody.

In Payton, the Court further indicated that if, in fact, a warrant for the arrest of an individual had been obtained, there was no additional need for a search warrant if the private residence to be entered was that of the arrestee. In situations where the arrestee was to be arrested in his own home, the arrest warrant was sufficient to authorize entry. In the Steagald case, however, the Court indicated that, standing alone, an arrest warrant was not sufficient to authorize entry in situations where

the "routine felony arrest" was to be effected in the private residence of a third party. Where the arrestee is to be taken into custody within the private residence of someone else, not only must the police first obtain an arrest warrant for the arrestee, they must also obtain a search warrant for the private residence that they intend to enter in order to make the arrest.

As with Payton, it is important to appreciate those situations to which Steagald does not apply. It, of course, has no bearing where the arrest is to be made in a public place. Nor is any warrant, either arrest or search, required in situations where the third party whose residence is to be entered consents to that entry. Lastly, Steagald, like Payton, only applies to "routine felony arrest" situations; it does not require police officers to secure a warrant where exigent circumstances exist.

One final consideration involves the execution of arrest (Payton) and/or search and arrest (Steagald) warrants. It is long established that, if during the course of bona fide execution of such a warrant the police observe a seizable item, e.g., contraband, fruits of a crime, evidence, etc., they may seize that item. And they may seize it notwithstanding the fact that the seized item is not enumerated in the warrant. This rule, however, does not transform a Payton or Steagald prompted warrant into a license to conduct a general search of the private residence which they have entered in order to find and arrest the individual named in the arrest warrant. However, a search of those areas in the private residence where the defendant is likely to be, is permissible. If the police seek something in addition to the

arrestee, they must first present their probable cause to a magistrate and have the search of the residence and the seizure of such additional matter expressly authorized by the warrant.

In the final analysis, the requirements of Payton and Steagald can probably be reduced to the following:

In "routine felony arrest" situations, if the arrestee is to be found in his own home -- obtain an arrest warrant; if the arrestee is to be found in the private residence of a third party -- obtain a search warrant for the residence and an arrest warrant for the arrestee.

DISPOSITION OF MOTOR VEHICLE TRAFFIC AND PARKING SUMMONSES ISSUED TO PUBLIC EMPLOYEES ON "OFFICIAL BUSINESS"

Deputy Attorney General Wayne J. Forrest
Division of Criminal Justice

On December 9, 1980, the County Prosecutors Association adopted guidelines promulgated by the Administrative Office of the Courts for the disposition of motor vehicle traffic and parking summonses issued to public employees on "official business." Pursuant to the provisions of Administrative Office of the Courts' (AOC) Directives No. 2-78, dated December 4, 1978 and No. 21-79, dated August 29, 1980, it is the mandate of the Supreme Court that the following procedures shall be employed in the handling of traffic and parking summonses issued to public employees on "official business."

Whenever a public employee is issued a traffic or parking summons, the employee may, in lieu of personal appearance, submit to the court a statement in mitigation or defense by affidavit as provided in R. 7:6-6. A statement in mitigation or defense by affidavit may be submitted in all traffic cases except those involving:

1. indictable offenses;
2. accidents resulting in personal injury;
3. operation of a motor vehicle while under the influence intoxicating liquor or a narcotic or habit-producing drug or permitting another person who is under such

influence to operate a motor vehicle owned by the defendant or in his custody or control;

4. reckless driving; or,

5. leaving the scene of an accident.

When this procedure is used by a public employee who proffers "official business" as a defense or mitigation, the affidavit shall include the exact nature of the business and the reason why such employee could not comply with the violated statute or ordinance. Further, the affidavit shall be accompanied by a letter from the public employee's supervisor, on the governmental agency's official letterhead, verifying that such employee was in fact on "official business."

As explained in the AOC Directives, each case will be decided on its own merits. There shall be no blanket policy of dismissal or suspension of all or part of any penalty, based on an "official business" defense or statement in mitigation. Finally, all proceedings involving traffic summonses which are not paid in full shall be on the record as required by R. 7:4-5. This includes those proceedings wherein the fine is to be suspended in whole or in part, dismissals and tickets where a defense by affidavit or statement in mitigation is submitted pursuant to R. 7:6-6.

RELATIONSHIP BETWEEN ASSISTANT PROSECUTORS AND INVESTIGATIVE STAFF

Prosecutor John H. Stamler
Union County Prosecutor's Office

The establishment of "full-time prosecutors' offices" in 1970 was somewhat of a misnomer: the investigative staffs and clerical bureaus were always full-time, it was just the attorneys who were being required, upon oath of office, to divest themselves of the private practice of law and devote all their time and energies to being full-time prosecutors.

Of necessity, certain conflicts were going to develop. Whereas before the detectives or investigators handled almost all of the administrative responsibilities in an office, the prosecutor and his assistants now assumed some or all of those duties, and for the first time assistant prosecutors became supervisors or legal advisors to detectives and investigators, overseeing or at least influencing how the investigative staff performed their jobs.

Following the model of the United States Attorney's Office, assistant prosecutors became managers of investigative personnel. The historical role of the assistant prosecutor as only a trial attorney evolved into a position that was as multi-faceted as the prosecutor saw the needs of his office and his "concept of law enforcement" in his county.

It was only natural that a certain amount of jealousy and resentment developed. The investigative staff saw themselves as

the "true professionals," career law enforcement officers, who saw the assistant prosecutors as merely passing through the office on their way to more rewarding careers in the private practice of law. Indeed, during the 1970's, the average stay of an assistant prosecutor in the prosecutor's office was 3 3/4 years; in most cases it was only natural for the former assistant to engage in criminal defense work, strengthening the police officer's resolve that lawyers and every assistant prosecutor is a potential defense attorney.

Even though one of the sponsors of the original Legislation creating full-time prosecutors and assistant prosecutors said "it was the interest of the Legislature to create career opportunities for prosecutors who were dedicated and well-qualified," practical realities would result in a substantial change in the legal staff during a prosecutor's term: lucrative offers from private law firms, dissatisfaction with salary or opportunity for advancement, the fact that the prosecutor might leave during his term to accept a judgeship, or the very real possibility that the prosecutor would not be reappointed if a governor of a different political party was elected.

The investigative staff was very much aware of this, and adding to their resentment of assistant prosecutors was that the prosecutor would give the assistants decent salary increases each year while the investigative staff, usually represented by a collective bargaining unit, received a lower percentage increase after protracted and costly negotiations or arbitration.

Clearly, a major accomplishment of any prosecutor's term will be how well the assistant prosecutors and investigative staff get along, because how well they get along will influence the productivity, reputation and integrity of the office.

The relationship between assistant prosecutors and the investigative staff will be influenced in large part by the prosecutor. He must define the chains of command and authority; he must avoid having one group perceive that the prosecutor favors or is more sympathetic to the other; he must care as much about his office and all its employees as he expects each of them to do.

Prosecutors will differ as much in philosophy, experience or personality as do the assistants and investigative staff people. If the prosecutor chooses a low-key approach to running his office, whether by reason of his philosophy or resource limitations, that will usually translate itself into the assistant prosecutors assuming more traditional roles of trial attorneys and legal advisors; if the prosecutor is aggressive and the resources of his office permit initiating original investigations and projects, assistant prosecutors are then usually required to assume emerging roles as managers and supervisors.

Neither is the "right" approach. The prosecutor's job is one of enormous responsibility and carries with it the authority to get the job done. It is just that because lawyers have traditionally been such poor managers that it is important to clearly direct--whether by memorandum or order--just what the respective roles of the investigative staff and assistant prosecutors are

and how the carrying out of those roles will enable the prosecutor to accomplish the goal he has set for the office.

Two areas that have the potential for causing divisiveness or resentment among assistant prosecutors and the investigative staff are press releases and opportunities for training.

The detective or investigator, as with the municipal police officer, rarely feels he gets the public recognition his investigative efforts brought about. As there are always enough cases of special importance during the year for which the prosecutor can handle the release of information to the media, it is a good idea to permit assistant prosecutors and investigative staff, within defined limits, to handle the press. Beside giving them exposure to one of the sensitive and important tasks of the office, dealing directly with the media assures the individual recognition that is so important to the investigative personnel and the assistant prosecutors.

Once the staff has been trained as to the Supreme Court guidelines governing what may and may not be released, it makes for good relations between the legal and investigative staffs and boosts an individual's morale to permit your people to directly deal with the press. As in every case, the size of the office and the experience and training of staff will influence the guidelines established by the prosecutor.

The prosecutor may want to consider a policy that permits a superior officer to handle media contact following the arrest or raid, and to have an assistant prosecutor handle media contact at and after the first legal step in the proceedings, usually the

arraignment. The larger the office, the more it makes sense to limit persons who have this responsibility, to assure uniformity in what is given out and who speaks for the prosecutor's office.

Consideration should be given to how you spend your training budget, being careful not to give the appearance of not affording investigative staff the opportunity, even if not with the same frequency, to attend courses out of state. Those officers know they will be in the office for their career while the assistants, for the most part, are just "passing through."

During the period when it is known a prosecutor will be leaving and his successor has not been named, or if named he has not yet been sworn, there will always be a certain amount of uncertainty, rumor and speculation about who the new prosecutor will be, and, after his name is announced, what changes will come about when he takes office.

Prosecutors' offices are among the more powerful and entrenched government organizations. Any prosecutor who believes he can take office and within months change the criminal justice system will experience frustrations unlike anything he knew in the private sector. Local police departments, municipal courts, the freeholders, and the press have all been in place for years; the prosecutor's attentions must first be directed toward making his office run smoothly (meaning all sections interacting according to his policies) so that his office can expect the support of those outside agencies or groups in gradually and effectively implementing his philosophy.

What follows is a suggested "order" or "memorandum" directed "To All Members of the Legal Staff and Detective Bureau" of the Prosecutor's Office "From" the Prosecutor, "Re: Relationship Between Assistant Prosecutors and Investigative Staff." It should be modified in as many respects as the prosecutor feels necessary to assure the integrated cooperation of his staff to assist him in his statutory obligations:

> The Prosecutor is a constitutional officer charged with the obligation "to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the Law."
>
> The Prosecutor of _____ County is the chief law enforcement official in the county; however, the _____ County Prosecutor's Office is not a police department: this is the _____ County Prosecutor's Office, not the _____ County Police Department; the detective bureau is the _____ County Prosecutor's Detective Bureau, not the _____ County Detective Bureau.
>
> The Prosecutor's first responsibility is to prosecute the criminal matters before the Courts of this county. That is why in many statutes that are still in effect the Prosecutor is referred to as the "Prosecutor of the Pleas." This is clearly a legal or prosecutorial function, and is as old as our legal system.
>
> The Prosecutor's second responsibility is to make sure the laws are enforced fully and fairly by the police agencies within the county. This supervisory function has gradually evolved into an investigative function because of the demands of present society.
>
> Municipal police departments handled criminal investigations exclusively until about twenty years ago. The Prosecutor's Office first contact with a criminal case was usually when the matter reached the Grand Jury. However, certain factors came into play which forced the Prosecutor to become involved in the investigatory stage of a criminal matter.
>
> The Prosecutor responded by setting up squads in the Prosecutor's Detective Bureau that would handle exclusively, or assist where requested, homicides, gambling and narcotics investigations. As the area of official corruption was spotlighted, it was only natural for the

Prosecutor to undertake such investigations. It would be unreasonable to expect a municipal police officer to investigate allegations of corrupt activity by the municipal officials who were responsible for the hiring, promotion, and salary raises of the municipal officer.

The Prosecutor hired municipal police officers as county investigators and detectives. As a result, many of those former municipal police officers believed their function and duties the same as when they were municipal police officers except now they enjoyed county-wide jurisdiction. That belief was as wrong then as it is today.

A municipal police officer is ultimately responsible to his chief of police. A county detective or investigator is ultimately responsible to the Prosecutor.

County detectives and investigators are appointed by the Prosecutor to assist the Prosecutor in the performance of the Prosecutor's constitutional and statutory obligations. As stated in State v. Winne, 12 N.J. 152 (1953):

> "The meaning of the quoted words is clear and unmistakeable in intent. Obviously they do not mean that the county prosecutor is required personally to detect, arrest, indict and convict, though he may and often does do so. They do mean, however, that he is responsible for seeing that those things are done either by himself or his staff or by the local law enforcement authorities functioning within his county. It is a matter of common knowledge that the local law enforcement authorities from the chanceman on his beat to the chief of police and beyond him to the director of public safety are responsive to the county prosecutor's concept of law enforcement on pain of possible indictment if they do not cooperate with him in enforcing the law. He does not stand alone. He is in a position to command the cooperation of all the law enforcing authorities in the county. He is amply equipped for the performance of his indispensable task, if law and order are to be maintained in the county and all our rights both of person and of property are to be adequately safeguarded."

While reference to the quoted portion is not meant to imply the Prosecutor will seek an indictment of any other law enforcement officer within the county who does not agree with the Prosecutor's "concept of law enforce-

ment," it should be clearly understood that the Prosecutor will discipline any member of the Prosecutor's Office (be he or she an assistant prosecutor, detective or investigator) for insubordination should the Prosecutor's policies as contained in this Order be ignored or frustrated by conduct contrary thereto.

I. ORDER OF AUTHORITY AND CHAIN OF COMMAND

In many or most organizations the order of authority and chain of command are identical because pure administration and substantive decision-making are accomplished by the same people. However, the Prosecutor's Office is unique. The authority to give orders concerning the prosecutorial and investigative work of this office differs from the chain to be followed to resolve a purely administrative problem (such as personnel matters, organization, etc.). The reason for this is that attorneys in this office are concerned with prosecutions from their inception as investigations to their conclusion at trial. They must be provided sufficient authority to fulfill their duty to represent the Prosecutor at all stages of the process. On the other hand, assistant prosecutors (excepting of course, the First Assistant, Administrative Assistant, Investigations Supervisor and Trial Supervisor) are not directly concerned with or responsible for the general administration of the Detective Bureau.

Therefore, regarding any investigation or prosecution undertaken by this office, the ORDER OF AUTHORITY shall be as follows:

The Prosecutor

The First Assistant Prosecutor

The Administrative Assistant Prosecutor

The Investigations Supervisor

The Trial Supervisor

An Assistant Prosecutor

The Chief of County Detectives

A Captain of County Detectives

A Lieutenant of County Detectives

A Sergeant of County Detectives

A County Detective

A County Investigator

Obviously, common sense and good judgment apply. I do not expect an assistant prosecutor in the trial courts to order a detective in the Homicide Squad to do something any more than I would expect an investigator in the trial unit to tell a trial assistant prosecutor he will only follow orders of his superior officer.

I do not expect an assistant prosecutor to tell a detective how a surveillance should be conducted, how many men should be used, who should do it, or for how long. But I do expect an assistant prosecutor to be able to tell a superior officer that a surveillance must be conducted.

I demand that there be complete cooperation and respect among the legal and investigative staffs. Whether an assistant prosecutor be in the employ of the office for one year or ten years, he is still an assistant prosecutor, an assistant of the Prosecutor. Because an investigator may have been in the office for ten years does not mean he has a greater stake in law enforcement than an assistant prosecutor who may last in the office only three years. Length of time in the office is not as important as dedicating one's efforts to honest, effective law enforcement.

If a detective or investigator feels that an assistant prosecutor has overstepped his bounds, he shall communicate that to his superior, or in the case of a superior, to the Chief, who shall communicate to the Prosecutor. The Prosecutor shall determine the propriety of such conduct. Repeated conduct contrary to the spirit of this Order may result in dismissal.

If an assistant prosecutor feels that a detective or investigator has failed to comply with the spirit of this Order, he shall communicate that to the First Assistant Prosecutor who shall communicate to the Prosecutor. The Prosecutor shall determine the propriety of such conduct. Repeated conduct contrary to the spirit of this Order may result in dismissal.

Regarding the administration and organization of the Detective Bureau, the CHAIN OF COMMAND shall be as follows:

The Prosecutor

The First Assistant Prosecutor

The Administrative Assistant Prosecutor

The Investigations Supervisor (as to the Investigative Section)

The Trial Supervisor (as to the Administrative Section)

The Chief of County Detectives

A Captain of County Detectives

A Lieutenant of County Detectives

A Sergeant of County Detectives

A County Detective

A County Investigator

As to the legal staff, the order of authority and chain of command are identical. Obviously, no member of the Detective Bureau possesses authority over or responsibility for any assistant prosecutor in any regard. Therefore, the order of authority and chain of command for assistant prosecutors is as follows:

The Prosecutor

The First Assistant Prosecutor

The Administrative Assistant Prosecutor

The Investigations Supervisor (as to those attorneys assigned to responsibilities in connection with investigations)

The Trial Supervisor (as to those attorneys in the Adult Trial Courts, the Family Courts and the Grand Jury)

An Assistant Prosecutor

The Grand Jury and Family Court Sections will have supervisors who will report to the Trial Supervisor, and above him to the First Assistant Prosecutor. The Appellate Section will have a Supervisor who also will report to the First Assistant Prosecutor.

> This definition of the order of authority and chain of command is intended to reflect my concept of the manner in which a Prosecutor's Office should function--as described throughout this General Order. It is intended to be a clear and unequivocal description of the authority to make decisions reposed in each member of the legal and investigative force of this office; it is not intended to authorize assistant prosecutors to become investigators and it is not intended to disturb the general administrative chain of command of the Detective Bureau. However, substantive decisions as to what evidence is needed, what investigative methods are lawful, etc. are to be made by assistant prosecutors. This has always been the case. This definition is not intended to change the manner in which the Prosecutor's Office operates but rather to clearly and forcefully define its method of operation in order to erase questions as to the authority of assistant prosecutors and investigative personnel.

Police Officers (as your investigative staff is) feel comfortable with working in a situation where they know what is expected of them. Defining the chains of command and authority gives the investigative staff the organizational structure and accountability within which they are expected to perform. Reminding assistant prosecutors that no member of the investigative staff should ever be treated as a "go-for" goes a long way to establishing the mutual trust and respect so necessary to getting everyone to pull together.

PRE-EMPLOYMENT BACKGROUND INVESTIGATIONS

Assistant Director Ronald D. Sost
Division of Criminal Justice

The Division of Criminal Justice has designed a background investigation procedure which will provide each County Prosecutor with sufficient information on a timely basis on the backgrounds of prospective employees. Also, the system is intended to provide each County Prosecutor with information that was previously identified as being the most relevant to the hiring and continued employment of personnel. The system incorporates all of those previous investigative steps which in the past have indicated derogatory information most frequently and also those investigative steps which can be conducted by the Division of Criminal Justice on a consolidated basis. For example, instead of having each of the twenty-one County Prosecutors' Offices maintaining contacts with a credit bureau, the United States Attorney's Office, the Secretary of State's Office, etc., the system incorporates these investigative steps to provide each County Prosecutor with background information from which he can make the determination as to whether or not the applicant should be hired or the employment continued. The County Prosecutor will receive a written report indicating that the Division conducted a background investigation which consisted of the checks set forth in Attachment A and also whether or not any derogatory information was reported.

The system provides that the responsibility for the conduct of field verification of the information contained in the application form or the interviewing of the neighbors will be the responsibility of the County Prosecutor's Office. The application form requests answers to questions that will provide information that is necessary to conduct a field verification. It is suggested that due to the employment mobility of Assistant Prosecutors and in the interest of avoiding duplication, these field interviews and reports be filed within the affected Prosecutor's Office with a copy sent to the Division of Criminal Justice. The resolution of issues raised in the report provided by the Division of Criminal Justice to each County Prosecutor will also be forwarded back to the Division so that this information can also be centrally assessed for other County Prosecutors interested in these personnel in the future.

The background investigations will be required for Assistant Prosecutors, County Investigators/Detectives, and Agents. It will be the responsibility of the County Prosecutor to handle background investigations for secretarial, clerical and professional employees other than Assistant Prosecutors, County Investigators/ Detectives, and Agents.

A Background Investigation Manual which contains specific details and instructions to be followed in utilizing the background investigation system has been provided to each County Prosecutor's Office. Additional assistance, if required, can be obtained by contacting the Chief of the Prosecutors Supervisory Section, Division of Criminal Justice.

The application form included in the Background Investigation Manual was designed to facilitate the conducting of the background investigation both by the Division of Criminal Justice and the respective County Prosecutor's Office. Although it is recognized that certain counties will still require the use of their own application form, it is strongly recommended that due to the fact that the application form included in the Background Investigation Manual must be used for background investigation, the County Prosecutors give serious consideration to using the form for their own purposes in order to avoid duplication and to take advantage of the extensive research that went into the development of the form.

The Background Investigation Manual also contains a list of suggested checks to be done by the Prosecutors (set forth in Attachment B).

ATTACHMENT A

List of Checks to be Included in Background Investigations

The background investigations to be conducted by the Division of Criminal Justice for prospective Assistant Prosecutors, County Investigators/Detectives, and Agents will include the following checks:

1. CRIMINAL JUSTICE
   a. Central Records

2. DIVISION OF MOTOR VEHICLES
   a. General license look-up
   b. Violations abstract.

3. LOCAL POLICE CHECK

4. DIVISION OF STATE POLICE
   a. Criminal Investigation Section
   b. Bureau of Identification
      (1) computerized criminal history (post 1972)
      (2) manual search (pre-1972) (DOB prior to 10/1/54)
   c. Intelligence Bureau
   d. Internal Records Section
   e. NCIC - wants and warrants
   f. Fingerprint Section
      (1) SBI
      (2) FBI

5. STUDENT LOANS

6. STATE INCOME TAX

7. NEW JERSEY U. S. ATTORNEY'S OFFICE

8. BAR (attorney applicants only)
   a. Central Ethics
   b. Clients Security Fund

9. CREDIT BUREAU

10. CORPORATE INVOLVEMENT (where applicable)

11. OUT-OF-STATE
    (out-of-State residents; New Jersey residents out of State for more than 1 year for educational or other purposes)
    a. State Police
    b. Local Police.

ATTACHMENT B

List of Checks Which Might Ordinarily be Included in Four-Way Confidential Character Investigations by State Police, But Which Will Not be Included in the Background Investigations Conducted by the Division of Criminal Justice. (Such checks should be conducted at the County level.)

1. MARRIAGE/FAMILY BACKGROUND
2. RESIDENCE
3. EDUCATION
4. MILITARY SERVICE
5. INTERVIEWS WITH NEIGHBORS
6. JUVENILE RECORDS
7. REFERENCES
8. COUNTY PROSECUTOR'S OFFICE
9. COUNTY IDENTIFICATION BUREAU
10. NEWSPAPER CHECK
11. NEW JERSEY SUPERIOR COURT FOR CIVIL ACTIONS
12. COUNTY COURTS AND COUNTY DISTRICT COURTS FOR CIVIL ACTIONS
13. UNITED STATES DISTRICT COURT FOR CIVIL ACTIONS, BANKRUPTCIES, ETC.
14. INDICES OF COUNTY RECORDS, GRANTOR/GRANTEE, MORTGAGOR/MORTGAGEE, LIENS AND JUDGMENTS
15. MEDICAL HISTORY
16. GOVERNMENTAL POSITIONS (EXCEPT IF PRIOR EMPLOYER WITHIN 2 YEARS)
17. PROFESSIONAL AND FRATERNAL ORGANIZATIONS
18. PROPERTY TAX
19. PRIOR EMPLOYERS (at least 2 years back)

DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION (CHRI)

Deputy Attorney General Anne C. Paskow
Division of Criminal Justice

Pursuant to the pertinent federal statutory and regulatory provisions, your agency is defined as a criminal justice agency.[1] According to law and the conditions of your terminal User Agreement, dissemination of criminal history record information (CHRI)[2] is restricted to criminal justice agencies, such as yours, only for the purposes of the administration of criminal justice[3] or criminal justice employment. In other words, your office should not respond to any request for CHRI for non-criminal justice employment, licensing, or other non-criminal justice agency or requester for any purpose. Inquiries for CHRI received from non-criminal justice requesters or for non-criminal

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[1] Criminal justice agency means courts or a government agency or subunit which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. 28 C.F.R. Chapt. 1, Sec. 20.3(c).

[2] Criminal history record information (CHRI) means information (whether computerized or not) collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom, sentencing correctional supervision and release. Essentially, it is a "rap sheet." It does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. See 28 C.F.R. Chapt. 1, Sec. 20,3(b).

[3] Administration of criminal justice means performance of any of the following: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It also includes criminal identification activities and the collection, storage and dissemination of CHRI. 28 C.F.R. Chapt. 1, Sec. 20,3(d).

justice purposes should be directed to the Records and Identification Section, New Jersey State Police, West Trenton, where they will be handled in a routine manner.

Your agency may, however, comply with a court order directing dissemination of CHRI, although these matters should ordinarily be directed to the State Police in the first instance. Unless a court order expressly authorizes dissemination of a more complete record, only a conviction record should be supplied. Indeed, it may be impossible for you to access or supply a "complete" record from your local computer terminal which can provide information only from 1972 to date.

These guidelines are intended to be consistent with, and are not intended to supersede, any memoranda from the New Jersey State Police addressed to All Contributor and User Agencies regarding the dissemination of CHRI. Any questions regarding these dissemination policies or procedures or use of the terminal in your county should be referred to either the State Police Records and Identification Section or to the State Police Legal Advisory Unit, Office of the Attorney General, Hughes Justice Complex, Trenton.

The CHRI guidelines discussed above also do not preclude any law enforcement agency from complying with N.J. Executive Order No. 123 (1985). This executive order requires law enforcement agencies to release to the public or media certain information as soon as practicable (within 24 hours) unless the release of such information will jeopardize the safety of any person or any investigation in progress or be, as determined and explained by

the Attorney General or County Prosecutor, otherwise inappropriate. Thus, the following types of information should be made publicly available:

(1) Where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any.

(2) If an arrest has been made, information as to the name, address and age of any victims unless there has not been sufficient opportunity for notification of next of kin of any victim of injury and/or death to any such victim or where the release of the names of any victim would be contrary to existing law or court rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered. These concerns are heightened when a crime has been reported but no arrest yet made.

(3) If an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information, and the identity of the complaining party unless the release of such information is contrary to existing law or court rule.

(4) Information as to the test of any charges such as the complaint, information and indictment unless sealed by the court.

(5) Information as to the identity of the investigating and arresting personnel and agency and the length of the investigation.

(6) Information as to the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police.

(7) Information as to the circumstances surrounding bail, whether it was posted and amount thereof.

All disputes between the custodian of any of these records noted in (1) through (7) and any person seeking access thereto as to whether or not the release of the records would be "otherwise inappropriate" shall be promptly resolved by the Attorney General or the County Prosecutor. If the Attorney General or County Prosecutor determines that the release of any records would be "otherwise inappropriate" he shall issue a brief statement explaining his decision.

ROOMING AND BOARDING HOUSE CASES

Legal Assistant Scott L. Siegel
Morris County Prosecutor's Office

I. AN OVERVIEW OF THE ROOMING AND BOARDING HOUSE ACT OF 1979

The Rooming and Boarding House Act of 1979, N.J.S.A. 55:13B-1 et. seq., was first enacted in 1979, and became effective on August 27, 1980 (hereinafter referred to as the Act). The Act was designed to provide a consistent framework to what had been a chaotic system of duplicative and competing statutes and regulations. See, Health and Welfare Committee Statement, Senate No. 3111, L. 1979, c. 496. Further, the Act was intended as remedial legislation to provide for the health, safety, and welfare of those persons residing in rooming and boarding houses in the State of New Jersey.[1] N.J.S.A. 55:13B-2.

The Act was developed as an omnibus piece of legislation. Its provisions are, therefore, found throughout various sections of the New Jersey Statute. The legislature intended to establish

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[1]The legislature intended the fire safety provisions contained in the Act to apply to religious organizations that provide rooming and boarding facilities to the needy; "...the legislature did not intend a wholesale exclusion of religious organizations from those requirements of the Act that would not intrude on the religious rights of the group's members; ...the selective exclusions afforded from the Act's otherwise broad coverage indicate that the legislature intended that the Act achieve its secular purposes without infringing on the constitutionally protected interests of the religious organizations." Hence, reversing the Appellate Division. Market St. Mission v. B.R.B.H.S., 110 N.J. 335, 336 (1988). This case discusses in context other various parts of the Act. See, 121 N.J.L.J. 1347, 1348).

a cooperative, interdepartmental approach between the Departments of Human Services, Health, and Community Affairs, with the Department of Human Services assuming the lead role.[2] See, Gordon and Lazarus, "New Jersey's Rooming and Housing Act: Its Effects and Effectiveness," 12 Seton Hall L. Rev. 484 (1982); Note, 18 Seton Hall L. Rev. 216 (1988).

The Act of 1979 has subsequently been amended in several areas. It is the purpose of this manual to highlight the changes which have been made, as well as make references to case law which has dealt with the statute.

The Commissioner of the Department of Community Affairs (hereinafter referred to as the Commissioner) is vested with the power to effectuate the provisions of the Act, including the authority to promulgate rules and regulations in accordance with the Administrative Procedure Act. N.J.S.A. 55:13B-4. Pursuant to N.J.S.A. 55:13B-4, extensive "Regulations Governing Rooming and Boarding Houses" were promulgated and are located in N.J.A.C. 5:27-1.1 et. seq.

A boarding house includes any building containing two or more units of dwelling space arranged or intended for single room occupancy and in which personal or financial services are provided to the residents. N.J.S.A. 55:13B-3(a)(h). Payment of monies from the residents to the operator is not an element of jurisdiction. N.J.S.A. 55:13B-3(a).

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[2]N.J.S.A. 26:2H-1 to 2H-21; N.J.S.A. 30:1A-1 to 1A-3; N.J.S.A. 30:11A-1 to 11A-13; N.J.S.A. 44:7-85 to 7-93; N.J.S.A. 55:13B-1 to 13B-21; N.J.A.C. 27:1.1 et. seq.

This definition does not include units which are occupied by an owner or person otherwise responsible for the daily operation of a rooming or boarding house. N.J.S.A. 55:13B-3(a),(e),(f). Originally the statute excluded: hotels; motels; established guest houses where the units are offered for a limited duration; foster homes; community residences for the disabled; and dormitories. N.J.S.A. 55:13B-3(a).

In 1985, the Act was amended to further extend the meaning of "owner occupied." A unit is deemed owner occupied if it is owned or operated by a nonprofit religious or charitable association or corporation and is used as the principal residence of a minister or employee of that corporation or association. Id. This amendment was prompted by the undue burden placed upon individuals who for charitable reasons, have taken the needy into their homes and thereafter been declared to be operating boarding homes, subject to the licensing requirements of the act. See, Assembly Housing and Urban Policy Committee Statement, Senate No. 2697, L. 1985, c. 364. The Act was also amended to exclude any one-family residential dwelling made available for occupancy by not more than six guests where the primary purpose of the occupancy is to provide charitable assistance and where the owner derives no income from the occupancy. N.J.S.A. 55:13B-3(a).

A rooming house is defined as "a boarding house which does not provide personal or financial services." N.J.S.A. 55:13B-3(h).

N.J.S.A. 55:13B-7 provides that rooming and boarding houses must be licensed by the Commissioner. N.J.S.A. 55:13B-4(C)

authorizes the Commissioner to issue, suspend, and revoke such licenses. Failure to obtain valid licensing shall subject an owner or operator of a rooming or boarding house to a civil penalty of not more than $5,000.00 for each building so owned or operated. N.J.S.A. 55:13B-7.[3] Further, the Act provides that each license issued shall be valid for one (1) year and may be renewed upon payment of the same fee required for the initial licensure. N.J.S.A. 55:13B-7(b).

The Act also provides that the operator[4] shall reside in the facility and shall be responsible for accepting service of any notices or orders issued by the Commissioner pursuant to the provisions of the Act. If an operator resigns, is dismissed, or is otherwise unable to carry out his responsibilities, the owner shall be deemed the operator until such time as the Commissioner is notified of the appointment of a new operator, and the owner shall have the same responsibilities and be subject to the same penalties prescribed for an operator under the Act. N.J.S.A. 55:13B-8.

The Act provides that each licensed rooming and boarding house located in the State of New Jersey shall be inspected at least once each year and that said facilities shall produce records for the purpose of determining compliance with the Act.

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[3]The provisions for licensing are located in N.J.A.C. 5:27-1.6 et. seq.

[4]An operator means any individual who is responsible for the daily operation of a rooming or boarding house. In contrast, an owner means any person who owns, purports to own, or exercises control of any rooming or boarding house. These defined terms are not exclusive; therefore, an owner could be deemed to be an operator under the Act. N.J.S.A. 55:13B-3(e), (f).

N.J.S.A. 55:13B-9. The Act provides that the Commissioner may enter and inspect any facility without prior notice and review such records. N.J.S.A. 55:13B-4D.[5]

Further, no person shall interfere with any action of the Commissioner in the exercise of any power or duty under the Act; no person shall prepare, utter or otherwise render any false statement, application, report or document, which is permitted or required under the Act; and no person shall refuse to comply with any ruling, order, notice or action made by the Commissioner pursuant to the provisions of the Act. N.J.S.A. 55:13B-10(a). N.J.S.A. 55:13B-10(b) provides that a civil penalty shall be assessed for violation of subjection (a) of N.J.S.A. 55:13B-10. It should be noted that the Commissioner may enforce the provisions of this act by entering a complaint through either administrative proceedings or civil actions in state and local court seeking injunctive relief and for the assessment of any penalties. N.J.S.A. 55:13B-4(f).

In an effort to strengthen the Act's enforcement provisions, in 1985, N.J.S.A. 55:13B-10(c) and (d) were also amended. If an owner or operator found to be in violation of the Act is a corporation, the Commissioner may take action against the

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[5]Pursuant to N.J.S.C. 5:27-1.10 a search warrant (administrative warrant) would be required in the event that an owner or an operator of a rooming or boarding house refused entry and inspection by an authorized representative of the bureau (Bureau, as defined in N.J.a.C. 5:27-2.1, means the Bureau of Rooming and Boarding House Standards in the Division of Housing of the Department of Community Affairs). The application for a search warrant must state whether the desired inspection is a regular inspection or a special inspection in response to information received by the bureau.

corporation, as well as holding its officers, directors, and shareholders personally liable. Additionally, the amendment established criminal penalties for certain violations of the act. The Commissioner may also suspend, cancel, or refuse to issue an endorsement of the license to operate the facility.

N.J.S.A. 55:13B-4(b) provides that the commissioner shall have the power to establish standards governing safety, security, record keeping, and living conditions and services.[6] These standards are enumerated under N.J.S.A. 55:13B-6 which reads:

> The Commissioner shall establish standards to ensure that every rooming and boarding house in this State is constructed and operated in such a manner as will protect the health, safety and welfare of its residence and at the same time preserve and promote a homelike atmosphere appropriate to such facilities, including, but not limited to, standards to provide for the following:
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> a. Safety from fire;
> b. Safety from structural, mechanical, plumbing and electrical deficiencies;
> c. Adequate light and ventilation;
> d. Physical security;
> e. Protection from harassment, fraud and eviction without due cause;
> f. Clean and reasonably comfortable surroundings;
> g. Adequate personal and financial services rendered in boarding houses;
> h. Disclosure of owner identification information;
> i. Maintenance of orderly and sufficient financial and occupancy records;
> j. Referral of residents, by the operator, to social service and health agencies for needed services;
> k. Assurance that no constitutional, civil or legal right will be denied

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[6]See, Dept. of Community Affairs v. St. Judes Bd. Home, 2 N.J.A.R. 432 (1981); the absence of fire safety devices constituted a hazard to the health, safety and welfare of the occupants.

> solely by reason of residence in a rooming or boarding house;
> l. Reasonable access for employees of public and private agencies, and reasonable access for other citizens upon receiving the consent of the resident to be visited by them; and
> m. Opportunity for each resident to live with as much independence, autonomy and interaction with the surrounding community as he is capable of.

The Act also contains a no-retaliation provision wherein the owner, operator, or employee of a rooming or boarding house may not evict a resident of said facilities who in good faith reports (or has an agent report) to a governmental authority alleged violations of the Act or of any health or safety law, regulation, code ordinance, or other law or ordinance which has as its objective the regulation of rooming and boarding houses. N.J.S.A. 55:13B-14.[7] Residents may now be evicted only for good cause as defined in N.J.S.A. 2A:18-61.1 (West Cumm. Supp.).

The Commissioner may authorize any county or municipality in the State to perform an inspection within its corporate limits as may be necessary to carry out the provisions of the Act, subject to the control and supervision of the Commissioner and in accordance with rules and regulations promulgated by the Commissioner governing the conduct of such inspections.[8] Every county

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[7]N.J.A.C. 5:27-4.1 et. seq. details the rights of residents, general building requirements, fire safety, security, resident's comfort, maintenance of records, food and laundry services, other personal services and financial services and financial services relating specifically to rooming and boarding houses.

[8]See, N.J.A.C. 5:27-1.3(b) stating that the Bureau may authorize any municipality or county, through its appropriate housing, health, fire prevention or social service agencies to perform inspections for the Bureau; see also, N.J.A.C. 5:27-10 (search warrants). See, N.J.A.C. 5:27-3.3(c) (Supp. 1980) which makes applicable the State landlord tenant eviction statute to rooming

or municipality so authorized shall furnish the Commissioner with such reports and information as the Commissioner may require. N.J.S.A. 55:13B-15(a).

N.J.S.A. 55:13B-19 and N.J.A.C. 5:27-3.1 enumerates a bill of rights for residents of rooming and boarding houses which are located within the State of New Jersey:

> Every resident of a boarding facility should have the right:
>
> a. To manager his own affairs;
> b. To wear his own clothing;
> c. To determine his own dress, hair style, or other personal effects according to individual preference;
> d. To retain and use his personal property in his immediate living quarters, so as to maintain individuality and personal dignity, except where the boarding facility can demonstrate that such would be unsafe, impractical to do so, infringes upon the rights of others and that mere convenience is not the facility's motive to restrict this right;
> e. To receive and send unopened correspondence;
> f. To unaccompanied access to a telephone at a reasonable hour and to a private phone at the resident's expense;
>
> g. To privacy;
> h. To retain the services of his own personal physician at his own expense or under a health care plan and to confidentiality and privacy concerning his medical condition and treatment;
> i. To unrestricted communication, including personal visitation with any person of his choice, at any reasonable hour;
> j. To make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which he is capable;

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and boarding houses.

k. To present grievances on behalf of himself or others to the operator, State governmental agencies or other persons without threat of reprisal in any form or manner whatsoever;
l. To a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident;
m. To refuse to perform services for the boarding facility, except as contracted for by the resident and the operator;
n. To practice the religion of his or her choice, or to abstain from religious practice; and
o. To not be deprived of any constitutional, civil, or legal right solely by reason of residence in a boarding facility.

N.J.S.A. 55:13B-20 provides that the operator of a rooming or boarding house shall given written notice of the bill of rights to each resident upon admittance to the facility.

Finally, the Act provides that any person or resident whose rights, as defined in the Act, are violated shall have a cause of action against any person committing such violation. The action may be brought in any court of competent jurisdiction to enforce the rights provided for in the Act; and in addition actual and punitive damages may be recovered. Further, any plaintiff who prevails in any such action under the Act shall be entitled to recover reasonable attorney's fees and costs of the action. N.J.S.A. 55:13B-21.

The impact and effect of the Act is civil in nature, as indicated by the enforcement provisions of the Act, particularly N.J.S.A. 55:13B-21. Moreover, the Act provides for civil penalties as remedies in the event that the terms of the Act are

violated. Although the Act is civil in nature, regulations promulgated in accordance with the Act address the duty of licensees relating to criminal acts committed, or alleged to have been committed, against the person or property of a resident of a rooming and boarding house. N.J.A.C. 5:27-6.3(a) provides that, "it shall be the duty of every licensee, upon learning of a criminal act committed or alleged to have been committed, against the person or property of a resident, to report all relevant information to the police agency having jurisdiction."

In addition, criminal actions may arise under the Act, especially where an inspector is denied access to rooming or boarding house premises and said inspector subsequently fails to obtain the necessary search warrant as required by N.J.A.C. 5:27-1.10. Failure to obtain a search warrant could result in criminal trespass actions pursuant to N.J.S.a. 2C:18-3. Further, the failure to secure a search warrant could result in motions to suppress evidence (such as business records or photographs) obtained due to unlawful entry into or onto the premises of a rooming or boarding house. Criminal actions involving rooming and boarding houses, other than those described above, are also contemplated by the Act. See, N.J.S.A. 44:7-93(b); county welfare boards shall, at the direction of the Commissioner of Human Services, investigate and evaluate reports of abuse or exploitation of residents of rooming and boarding houses.

In conclusion, the Rooming and Boarding House Act of 1979, and subsequent amendments, provide a consistent, remedial scheme to regulate the health, safety and welfare of those persons

residing in rooming and boarding houses in the State of New Jersey. While the Act is civil in nature, criminal actions may still arise under it. The Act is a legislative device which will no doubt require the use of the criminal law and criminal procedure in order to fully protect the rights of those persons residing in rooming and boarding houses in the State of New Jersey.[9]

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[9]N.J. Ass'n of Health Care Facil. v. Klein, 182 N.J.Super. 252 (App. Div. 1981) dealt with personal needs allowance regulations promulgated by the Department of Human Services to implement the Act.

II. GUIDELINES GOVERNING REFERRAL OF CASES UNDER THE ROOMING AND BOARDING HOUSE ACT CONCERNING COURSES OF CONDUCT NOT SPECIFICALLY COVERED IN THE CRIMINAL CODE

In 1981, guidelines governing the referral of cases to the Prosecutor's Office under the Act were prepared by a sub-committee headed by Union County Assistant Prosecutor Henry Jaeger. These guidelines have not been amended, and are set forth in detail below.

GUIDELINES

State law requires that all cases involving the suspected abuse or exploitation of the residents of rooming houses, boarding houses and residential health care facilities be reported in writing to the County Prosecutor by the County Welfare Agencies. N.J.A.C. 10:123-2.4(b)(2). See, N.J.S.A. 30:1A-3.[10]

New Jersey law defines abuse as the "willful infliction of physical pain, injury or mental anguish; unreasonable confinement; or the willful deprivation of services which are necessary to maintain a person's physical and mental health." Exploitation is defined as "the act or process of using a person or his resources for another person's profit or advantage." N.J.S.A. 30:1A-3(a).

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[10]The regulation promulgated pursuant to the Act provides that County Welfare Agencies shall report findings in writing to the County Prosecutor when a determination is made that a resident of a rooming or boarding house may have suffered abuse or exploitation. N.J.A.C. 10:123-2.4(b)(2). See, N.J.A.C. 10:123-2.4(b)(1). The regulations also provide that such reports compiled by County Welfare Agencies shall be forwarded to the Division of Youth and Family Services (DYFS), N.J.A.C. 10:123-2.4(b)(1), which is specifically authorized and directed to assist and supervise the County Welfare Agencies in their provision of services to eligible residents of rooming and boarding houses. N.J.A.C. 10:123-2.2(c).

The major difficulty with preparing guidelines governing the referral to a Prosecutor's Office is that the definition of abuse and exploitation as defined in N.J.S.A. 30:1A-3 is broader than the criminal law definitions of the same terms. It follows, therefore, that if all cases involving possible abuses and/or exploitations, as defined under Title 30, are referred to a Prosecutor's Office, the Prosecutor may find himself swamped with complaints involving situations over which he has no power or authority.

The referral obligation will be satisfied if the Commissioner of the Department of Human Services or his designee refer to the prosecutor or the municipal police departments[11] all cases involving any of the following:

1. The death of a resident under any circumstances which indicate that the death was other than natural;

2. The purposeful aiding of a resident in a suicide or a suicide attempt;

3. Any injury to a resident requiring hospitalization or emergency medical treatment, if the injury was neither the result of an accident nor self-inflicted;

4. The assault of a resident where a person:

(a) attempts to cause or causes bodily injury to a resident with or without a weapon; or

[11]For the purpose of this act the municipal police department is deemed an agent of the Prosecutor's Office.

(b) attempts by physical menace to put a resident in fear of imminent bodily injury; or

(c) points a firearm at a resident.

5. The threat to commit any crime of violence with purpose to terrorize a resident;

6. Any resident or confinement of a resident which exposes the resident to a risk of physical injury;

7. The subjecting or exposing of a resident to sexual activity involving the use of physical force or coercion; or where the resident was physically helpless, or mentally incapacitated; or where the actor has some supervisory or disciplinary power over the resident;

8. The intentional offering, giving or enticing of a resident to take or accept any treat, candy, gift or food which is poisonous, or harmful to the health or welfare of such resident;

9. Any other continuing course of conduct which tends to deprive a resident of those essentials necessary to maintain the resident's physical or mental well-being;

10. The wrongful taking of the property of the resident;

11. Using threats to inflict bodily injury to obtain the property of the resident;

12. Using threats to physically confine or restrain the resident in order to obtain his property;

13. Using the threat to institute criminal or disorderly persons charges against the resident to obtain his property;

14. Using the threat of exposing something about the resident, whether true or false, that will subject the resident to

hatred, contempt or ridicule to obtain the property of the resident;

15. Using the threat of testifying or not testifying or providing or withholding information with respect to a resident's legal claim or defense to obtain the property of the resident. N.J.S.A. 2C:20-5;

16. Using the services of the resident to which a person is not entitled for that person's own benefit; (e.g., having residents make potholders, baskets, etc., and then selling them without the resident partaking in the proceeds). N.J.S.A. 2C:20-8(b).

17. Obtaining the property of a resident upon an agreement to make a specified disposition and dealing with that property as his own or failing to make the required disposition. N.J.S.A. 2C:20-9;

18. Making a false or misleading statement in any advertisement designed to promote a resident's initial or continued residency at a given facility. N.J.S.A. 2C:21-7(e);

19. Misapplication or improper disposition of the property of a resident or another intended for the benefit of a resident, by an owner, operator or employee of the facility, whether or not the actor derived a benefit from the misapplication or improper disposition of the property;

20. Causing or inducing a resident to execute any instrument affecting or purporting to affect or likely to affect the pecuniary interest of the resident by means of deception.

In those instances where this type of referral is made, the Commissioner of the Department of Human Services or his designee[12] shall send to the Prosecutor's Office or the Municipal Police Department:

1. The name of the victim;

2. The name and address of the boarding house;

3. The date of the offense;

4. All information regarding the nature of the offense;

5. The extent of injury to the victim;

6. If it was reported to a police department; to what department and the officer's name;

7. The names of the person or persons suspected of having committed the criminal conduct;

8. Recommendations as to the need for further investigation by the Prosecutor.

In those instances where either a continuing course of conduct or repeated violations are alleged, the Commissioner or his designee in addition to sending the above-described materials, shall also provide the following:

1. The names and, if no longer at the facility, the addresses of the residents who have been the victims of prior acts of suspected abuse or exploitation;

2. A description of the acts of abuse or exploitation alleged;

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[12]In particular, County Welfare Agencies. N.J.A.C. 10:123-2.4(b)(1).

3. The approximate dates of such abuse or exploitation; and

4. The names of the person or persons suspected of having committed the above-described instances of abuse or exploitation.

CIVIL COMMITMENTS
INSANITY ACQUITTALS, INCOMPETENCY TO STAND TRIAL, REGULAR COMMITMENTS

Assistant Prosecutor Susan M. Scarola
Union County Prosecutor's Office

The statutes and rules governing civil commitments do not generally involve extensive prosecutorial involvement since these matters are usually handled at the local level by relatives of the committed patients and medical personnel. However, thorough knowledge of commitment procedure is essential in order to fulfill the Prosecutor's duty in those cases in which a verdict of "not guilty by reason of insanity" has been returned. Each Prosecutor's Office must establish a procedure to monitor and track these matters. These cases can never be considered "closed" (as to review hearings) until the maximum ordinary term of imprisonment that could have been imposed has expired; thereafter, review is determined by the regular civil commitment procedure.

The decisions of the Supreme Court in State v. Krol, 68 N.J. 236 (1975) and State v. Fields, 77 N.J. 282 (1978), provide for rules to govern the disposition of those persons who have been acquitted of criminal charges by reason of insanity. The Court authorized the automatic temporary commitment of insanity-acquittee for up to 60 days for the purpose of a psychiatric evaluation of his current mental condition and propensity for future anti-social conduct. The State is further authorized to seek, within that period, the indefinite imposition of restraints

on the insanity-restrictions upon the liberty of such persons committed at each periodic review proceeding by establishing, by a preponderance of the evidence, that such restrictions meet the criteria set forth in Krol for the initial imposition of restraints.

The Criminal Code of New Jersey, effective September 1, 1979, provided the statutory criteria to be followed for commitment of a defendant after acquittal by reason of insanity, N.J.S.A. 2C:4-7 et. seq., and essentially codified the provisions set forth in Krol and Fields. In those cases where a defendant has been acquitted by reason of insanity, the Court must order that the defendant undergo a psychiatric examination by a physician of the Prosecutor's choice. The defendant also has the right (should he so desire) to be examined by a psychiatrist of his choice. Subsequent to the examination, the Court may order the defendant released without supervision if he is found to be without danger to the community or himself; or the Court may order the defendant released under supervision or under conditions if such release is without danger to the community or himself; or if the Court finds that the defendant cannot be released with or without supervision or conditions without posing a danger to the community or himself, the Court must commit the defendant to a mental health facility to be treated as a person civilly committed. These proceedings, although civil in nature, include the periodic review at which the prosecuting attorney has the right to appear and be heard. The defendant's continued commitment is governed by the law concerning civil commitments and is established by a preponderance of the

evidence. The insanity-acquittee may not be held for more than the maximum ordinary term of imprisonment that could have been imposed for any charge for which he has been acquitted by reason of insanity and may not be confined in a penal or correctional institution during that time, although the regular civil commitment may continue.

The insanity-acquittee is entitled to periodic review of his condition and may be discharged or released under conditions if he is without danger to himself or to others, or he may be transferred to a less restrictive setting for treatment. The Commissioner of Human Services or the superintendent of the institution to which the insanity-acquittee has been committed can report to the Court from which the person was committed and make application for the discharge or release of such person. Copies of that application and report must be provided to the Prosecutor and defense counsel. The Court may, in its discretion, appoint two qualified psychiatrists (neither of whom may be on the staff of the hospital to which the defendant has been committed) to examine such person and report within 30 days (longer if the Court concurs) their opinion as to his mental condition.

If the Court is satisfied by the report and the testimony of the psychiatrists that the insanity-acquittee may be discharged, released under conditions or under supervision or be treated a less restrictive setting, the Court may then order his discharge, release or transfer. If the Court is not satisfied, it must order a hearing to determine whether the patient may safely be discharged, released or transferred. Although these proceedings

are deemed civil in nature, the Court will still have the options available as indicated above: release without supervision, release under conditions or with supervision, or continued commitment. The insanity-acquittee himself may make application to the Court from which he was committed for his discharge or release but the Court will utilize the same procedure as indicated above. Each patient's case is specifically reviewed as provided by the law governing civil commitment, i.e., on or before three months after judgment, six months later, one year later, and annually thereafter.

The burden had been placed upon the State to justify, by a preponderance of the evidence, the continued restraints or commitment of the insanity-acquittee. At the initial judicial proceeding following the acquittal by reason of insanity, the State is required to satisfy the Court both as to the need for restraints and the suitability of the extent of the restrictions it seeks. State v. Fields, supra at 301. The initial Court order should protect the public's interest, as well as provide appropriate care and treatment without unduly infringing upon the insanity-acquittee's liberty or autonomy. In order to achieve this goal, the State should be prepared to offer the testimony and reports of psychiatrists who can substantiate the need for commitment and/or restrictions or restraints.

At each periodic review hearing thereafter, the State again "must review its authority to subject [the insanity-acquittee] to a partial or total deprivation of his liberty ... by demonstrating that such a deprivation is warranted by the [patient's] current

condition." Id. At the first periodic review hearing the Court must evaluate the current suitability of any restraints being imposed. The Court must consider any improvement or deterioration in the patient's condition since the initial hearing which would serve to increase or decrease the danger posed to himself or the community under the current level of restraints. Id. The State again has the burden of justifying the continued level of restraints, or of seeking an increase or decrease in their level. Any order entered by the Court should provide for the least restrictive restraints consistent with the well-being of the community and the individual. While the Prosecutor should realize that the Court will not hasten the gradual de-escalation of restraints placed upon the insanity-acquittee's liberty, the State must assume the burden for their prolongation. To that end, at review hearings, the State must provide the Court with reasonably contemporaneous psychiatric reports and testimony detailing the reasons for the continued treatment or restraints and the threat to the community presented by the patient's current mental state and the dangerousness attributable thereto. At some point during the course of review hearings, the written reports may provide the Court with sufficient information upon which to base an order of restraint; however, this point should ordinarily not be reached within the first several years of review hearings and, of course, would not apply in those cases where testimony would be necessary, as when increased restrictions or commitment were sought. It is the duty of each Prosecutor's Office to monitor these cases, not only tracking the dates of the periodic reviews, but also to

ensure the adequacy of evidence and proofs for the Court to enter the appropriate order.

Because of the references in the criminal statutes to the civil commitment procedure, the Prosecutor should be aware of the regular commitment process and the rights which attach to those patients who have been civilly committed. The civil commitment process is governed by N.J.S. 30:4-27.2 and R. 4:74-7. Prior procedural abuses have been corrected by the legislation and ensure that no person may be involuntary committed to a psychiatric institution without having been afforded the fundamental procedural due process rights of representation by counsel, adequate notice, adequate proofs and regular review hearings.

A civil commitment is commenced by the filing in the Office of the County Clerk a written application signed by the person seeking the commitment, which should include the certificates of two licensed physicians that commitment is necessary. If the patient is an adult, the certificates must state with particularity the facts upon which the physician relies in concluding that the patient, if not the committed, poses a probable danger to himself or to others or to property. If the patient is a minor, the certificate may state in the alternative the facts upon which the physician relies in concluding that the minor is in need of intensive psychiatric therapy which cannot practically or feasibly be rendered in the home or in the community or on any out-patient basis. The reason for this alternative standard for children is that adults who are competent

but in need of mental treatment may well have the right to decline such treatment, but children who are so seriously ill as to require institutionalization should not be denied treatment even if they are not probable dangers to themselves or to others. In either case, a temporary commitment (not to exceed 20 days) may then be ordered by the Court.

Three different types of commitments may be authorized: "Class A," in which temporary confinement is not necessary before the entry of the temporary order; "Class B," in which immediate temporary confinement is necessary but where the order can be obtained before the institutionalization; and "Class C," in which immediate confinement is required and a temporary order cannot be obtained before institutionalization. The temporary commitment order provides for a review hearing not more than 20 days from the filing of a Class A application, not more than 20 days from the date of admission of the patient into the institution on a Class C commitment. The date is not subject to adjournment except in exceptional cases and for good cause shown in open court, but may be adjourned if necessary for a period of not more than 10 days.

The temporary order should specify the persons to be notified of the time and place of the review hearing, the mode of service and the time within which notice must be served. Notice must be given at least 10 days prior to the hearing. The patient must be given notice by personal service and must have counsel appointed to represent him, or, in the case of a minor, a guardian ad litem, who shall serve until the patient is released or until the minor reaches his majority or is released. In addition to the patient

and his counsel or guardian ad litem, notice must also be given to the applicant for the commitment, the nearest relatives of the patient, the County Adjustor and the Superintendent of the institution where the patient is confined. The form of notice served upon the patient and his attorney should include a copy of the application and the physicians' certificates although the patient may not be served with the certificates if either physician has indicated that the patient's mental condition would be adversely affected thereby.

No permanent commitment order can be entered except after a hearing conducted in accordance with the rules of court. The application for the commitment must be supported by the oral testimony of at least one psychiatrist who has conducted at least one examination of the patient subsequent to the day of the temporary order. The patient is required to appear at the review hearing by may be excused from the courtroom during any or all portion of the testimony upon application for good cause shown. Good cause would include the testimony by the psychiatrist that the mental condition of the patient would be adversely affected by the patient hearing his candid and complete testimony. The patient may testify on his behalf but does not have to. The hearing shall be held in camera except for good cause shown. The applicant for the commitment may appear either by counsel retained by him or by the County Adjustor; the patient must be represented by an attorney and may not appear pro se.

The Court will enter a judgment of commitment to an appropriate institution if it finds from the evidence presented at

the hearing that the institutionalization of the patient is required by reason of his being a danger to himself or to others or to property if he is not so confined and treated or, alternatively, if the patient is a minor and the Court finds that his is in need of intensive psychiatric therapy which cannot practically or feasibly be rendered in the home or in the community or on any out-patient basis. Under appropriate circumstances, the Court may enter an order releasing the patient under supervision or conditions (such as to a non-residential mental health facility), with such order being subject to periodic review as indicated herein.

If the patient is an adult, the judgment will provide for further review of the commitment no later than three months from the date of judgment, and on or before six months from the date of the first review hearing, and on or before one year from the ate of the second review hearing, and at least annually thereafter if the patient is not discharged. If the patient is a minor, the commitment shall be reviewed every three months from the date of the commitment until the minor is discharged or reaches his maturity. If the patient has been diagnosed as suffering from either severe mental retardation or severe irreversible organic brain syndrome, all reviews after two years have elapsed from the date of judgment may be summary, provided that all parties in interest have been notified of the review date and provided that the Court and all interested parties have been furnished with a report of a physical examination of the patient conducted within the previous three months. The Court may, in its discretion, at a

review hearing, where the advanced age of the patient or where the cause or nature of the mental illness renders it appropriate, and where it would be impractical to obtain the testimony of a psychiatrist, support its findings by the oral testimony of a licensed physician.

The proceeding referred above would also apply to persons whose competency to stand trial has been questioned. See N.J.S. 2C:4-5 and 6. Whenever there is reason to doubt the defendant's fitness to proceed, the Court may, on motion by the Prosecutor, the defendant or sua sponte, appoint at least one qualified psychiatrist to examine or report upon the mental condition of the defendant. The Court may order the defendant to be committed to a hospital (or other suitable facility) for the purpose of a psychiatric examination for a period not exceeding 30 days although an extension of 15 days may be granted if necessary.

The Court must determine whether the defendant is fit to proceed to trial. If the Court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended. The Court may then commit the defendant to the custody of the Commission of Human Services to be placed in an appropriate institution if it is found that the defendant is so dangerous to himself or to others as to require institutionalization. The Court may also determine whether placement is an out-patient setting or release is appropriate. No commitment to any institution can be in excess of such period of time during which it can be determined whether it is substantially probable that the defendant will regain his competence within the foreseeable

future. If the defendant has not regained his fitness to proceed within a reasonable period of time deemed adequate by the Court, the Court shall order a hearing (if one is requested) and can dismiss the charges and order the defendant discharged or, subject to the law governing civil commitment, order the defendant committed to an appropriate institution.

In those cases where the charges are not dismissed, the matter will be specifically reviewed by the Court that the defendant either stand trial or that the charges be dismissed. When the Court determines that the defendant has regained his fitness to proceed, the proceedings shall be resumed. When the Court determines after a hearing that the defendant has not regained fitness to proceed, it may order the institution of civil commitment proceedings or may order the defendant paroled or released on conditions if he is found to present no danger to himself or to others. If it is determined that it is not substantially probable that the defendant will regain his competence in the foreseeable future, the Court may dismiss the charge and either order the defendant discharged or committed to an appropriate institution subject to the law governing civil commitment. If the defendant is committed to an institution under the civil commitment procedures, the provisions referred to above relating to periodic review, would then apply.

WAIVER OF PUBLIC BID REQUIREMENTS FOR PURCHASE OR LEASE OF EQUIPMENT FOR CONFIDENTIAL INVESTIGATIONS PURSUANT TO N.J.S.A. 40A:11-5(1)(g)

Assistant Director Ronald D. Sost
Division of Criminal Justice

N.J.S.A. 40A:11-5(1)(g) pertains to the purchase or lease of equipment by a public unit of government and the requirement for the public advertisement of bids for such equipment and the public process for bidding such equipment. This statute underwent an amendment in 1975 and now provides that:

> Any purchase, contract or agreement...may be made, negotiated or awarded by the contracting unit, without public advertising for bids and bidding thereof, if
>
> (1) The subject matter thereof consists of:
>
> (g) the acquisition, subject to prior approval of the Attorney General, of special equipment for confidential investigation.

Since the institution of this amendment, the Attorney General has received a number of requests by county and local law enforcement officials to approve a waiver of public advertisement and bidding procedures with regard to equipment that has been proposed for purchase or lease by the aforementioned officials. While the majority of these waiver requests have been approved by the Office of the Attorney General, there have been questions regarding the procedural framework under which such requests will be received and processed. To this end, the following statements

have been instituted and will form the foundation for the waiver request process.

POLICY STATEMENTS

1. Pursuant to N.J.S.A. 40A:11-5(1)(g), a request by a contracting unit of government to the Office of the Attorney General for a waiver of the public advertising for bids and the necessity of a public bidding process with regard to the lease and/or purchase of equipment for a confidential investigation, will be based upon the acquisition of equipment, the public advertising or bidding of which would jeopardize the operation of the investigative effort or the law enforcement mission of the acquiring agency through the public disclosure of such equipment acquisition.

2. Where practical, the requesting agency will secure three (3) cost quotations based upon the defined standards and equipment criteria from the appropriate vendors as to the purchase/lease, installation, operation and/or maintenance of such equipment. The vendor/contractor quotes will be incorporated into the waiver request as will any justification by the requesting agency for non-compliance with the multiple vendor quote requirement.

3. In those instances where the requesting agency is a local unit of government or a county agency other than the prosecutor's office, the waiver request will be transmitted to the county prosecutor who, in turn, will direct the request to the Director of the Division of Criminal Justice. In those instances where the requesting agency is the

prosecutor's office, the waiver request will be directly transmitted to the Director of the Division of Criminal Justice.

4. The requesting agency will submit the request, in writing, and, at a minimum, the request will contain:

   a. an identification of the equipment that is the subject of the request;

   b. the rationale and justification of the requesting agency in supporting the waiver of public bidding and advertising process;

   c. the three (3) vendor/contractor quotes with regard to the purchase/lease of the equipment, or, in the alternative, the basis for non-compliance with the quote requirements;

   d. any previous governmental action, official or unofficial, taken by the requesting agency with regard to the acquisition of the equipment that is the subject of the waiver request;

   e. any identified timetable with regard to the acquisition, installation and/or operation of the equipment;

   f. the identification of those individuals responsible for the preparation of the waiver request and having the authority to enter into the contractual agreements with regard to the equipment which is the subject of the waiver request.

5. The waiver request will be reviewed by representatives of the Department of Law and Public Safety and a decision will be rendered, in writing, by the Attorney General.

PROCESSING PROCEDURES

1. Upon receipt of a waiver request by the Director, of the Division of Criminal Justice, the request and any accompanying documentation will be transmitted to the Assistant Director, Administrative Section, Division of Criminal Justice.
2. Within a period of time determined by the implementation schedule identified in the waiver request, the Administrative Section, of the Division of Criminal Justice, will evaluate the validity of the request and will transmit their recommendation as to the approval or disapproval of the request to the Director, of the Division of Criminal Justice, for interim approval.
3. Upon review by the Director, of the Division of Criminal Justice, and selected Assistant Attorneys General within the Division of Criminal Justice, the Division recommendation will be forwarded to the Attorney General and copies to the Administrator, Office of the Attorney General, for final approval.
4. The final decision as to the approval or denial of the waiver request will emanate, in writing, from the Attorney General with copies of the written decision being directed to all appropriate parties.

SPEEDY TRIAL PROGRAMS
CASE SCREENING AND ADMINISTRATIVE DISPOSITIONS

Assistant Prosecutor Joseph F. Audino
Camden County Prosecutor's Office

Screening refers to the structured decision-making process by which a prosecutor determines to discontinue all further prosecution against the defendant, or alternatively decides to embark upon a course of criminal prosecution or "voluntary" diversion. The screening process is the Prosecutor's primary tool for determining whether or not a particular defendant should be indicted, and if not, what is the appropriate alternative. Alternatives range from return of the municipal court for trial, diversion, referral to other agencies, and dismissal.[1]

STANDARD 1

> In January 1981 the New Jersey Supreme Court established guidelines for a speedy trial program. With the establishment of this program it has become even more important for Prosecutors to establish a screening procedure in which an attorney reviews the complaint and supporting police reports of every case which is referred to the Prosecutor's Office immediately upon receipt of such documents. Prosecutors should determine whether the complaint ought to be referred to the grand jury, recommended for diversion, downgraded and returned to municipal court for trial, administratively dismissed, or referred for other non-criminal disposition.

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[1] The Prosecutor's Changing Decision: A Policy Perspective, by Joan E. Jacoby (National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, 1977); Pre-Trial Screening in Perspective, by Joan E. Jacoby (National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, 1976).

The first standard requires that the screening decision be made by an attorney. The complexity of the decision-making process and the ease with which improper considerations can insinuate themselves into the screening decisions require that the person charged with that decision be fully and professionally trained. A screening attorney can benefit from the services of a paralegal assistant. Nevertheless, an attorney is subject to the disciplinary rules of the legal profession and is equipped with an intellectual overview of the criminal justice system. We have thus concluded that an assistant prosecutor must be responsible for this decision under the supervision of the County Prosecutor. Timing of the screening decision is also important. The earliest opportunity at which an effective screening decision can be made is when the screening Prosecutor is in possession of the CDR 1 or CDR 2 form, as well as the written police reports and statements of the witnesses. If the case is to be returned to municipal court, the sooner that transfer is completed, the more effective will be the resulting disposition.

STANDARD 2

> Criminal proceedings should be terminated if there is not a reasonable likelihood that the admissible evidence would be sufficient to obtain a conviction and sustain it on appeal.

Standard 2 requires that a realistic assessment of the viability of the case be made at the earliest time. If the Prosecutor cannot expect to secure a conviction and to sustain it on appeal, then it is a waste of resources to pursue the matter.

In these instances, prosecution should be terminated as soon as possible.

STANDARD 3

Criminal proceedings should be terminated when society would benefit by virtue of another form of disposition. Among the factors which a Prosecutor may properly consider in exercising his discretion are:

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 accused 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 diversion and conditional discharge;

q. Any provisions for restitution;

r. Any mitigating circumstances;

s. The availability and 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 of 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 offense.

Standard 3 introduces guiding principles which may indicate termination of a prosecution is appropriate in spite of the fact that a conviction could be obtained. This list is not intended to be exhaustive. It merely attempts to recognize that the screening decision is affected by a complex interplay of factors which are social and governmental in nature, yet critical to the conscientious screening decision.[2]

In 1975, the Attorney General issued a comprehensive opinion setting forth the Prosecutor's role with respect to the

[2]The reader can find an excellent discussion of these factors in the National Advisory Commission on Criminal Justice Standards and Goals Report, Courts (1973), Standard 1.1, p. 20ff.

disposition of criminal cases.[3] In essence, the Attorney General concluded that Prosecutors were authorized to administratively dismiss criminal prosecutions without presenting such matters to the grand jury. The Attorney General suggested that the County Prosecutor's Association develop uniform standards to guide its members in the exercise of their discretion. Pursuant to that suggestion, guidelines were promulgated and published in the Criminal Justice Quarterly.[4] Further, uniform procedures were developed pertaining to the maintenance of records and the notification of parties having an interest in such administrative dispositions. Finally, R. 3:25-1 was subsequently altered to require the Prosecutor to notify the assignment judge with respect to criminal complaints which have been administratively dismissed.

Certain basic principles should be emphasized in defining the parameters of prosecutorial discretion. Of course, the primary duty of a Prosecutor is to prosecute criminal offenders. However, the Prosecutor's responsibilities are far-ranging and thus it is incumbent upon him "to see that justice is done."[5] Prosecutorial authorities are bound to exercise discretion based upon their "judgment and conscience ... in accordance with established principles of law."[6] The concept of prosecutorial discretion implies conscientious judgment, not arbitrary action. Obviously, personal gain or favoritism are to play no part in

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[3] Attorney General's Opinion No. 11.
[4] See 4 Crim. J. Q. 107 (1977).
[5] Canons of Professional Ethics, Canon 5.
[6] State v. LaVien, 44 N.J. 323, 327 (1965).

decision-making. A Prosecutor's range of choices, not unlike those within the judicial domain, depends upon the particular circumstances of each case. Among the factors to be considered in the screening process are those listed in Standard 3.

STANDARD 4

> Written guidelines should be formulated by each Prosecutor to structure the exercise of prosecutorial discretion and identify specific factors to be considered in screening decisions.

Standard 4 requires each Prosecutor to develop his own written guidelines for screening, which are more concrete and specific than those adopted in national and statewide standards. These guidelines should contain an analysis of the factors which ought to be considered in the charging decision. The local screening manual can also serve as an educational device for attorneys newly assigned to the screening unit, and should promote uniformity of decision-making among the various assistant prosecutors. The guidelines should contain an express explanation that they are intended to serve as general rules. There will be many exceptions, and the guidelines themselves are subject to frequent review and change.

The development of written standards on both the statewide and local levels is essential to the proper functioning of the Prosecutor's Office. As indicated in the NAC Standards, Courts, Commentary on Standard 1.2, at p. 26, the written standards are related to the checks and balances system inherent in our form of government.

> If the suggestions concerning the administrative regularity of the screening decision contained in these standards are

> implemented, they will provide better protection against improper exercise of screening discretion than could be provided by the more traditional remedy of judicial review. Therefore, the Commission favors insulating the prosecutor's decision from judicial scrutiny, but only on the premise that detailed guidelines will be formulated by the prosecutor and their even-handed application policed within his office.

Failure to develop such standards will result in unnecessary judicial intrusion into the screening decision.

STANDARD 5

> The speedy trial programs of some counties have eliminated the probable cause hearing; however, in those counties where probable cause hearings are still held, where practicable, an assistant prosecutor should be present in municipal court. The screening decision should be made at the earliest possible point in time and observation of witnesses at the probable cause hearing can be valuable in this regard. Initially, arrangements should be made to appear in those municipal courts generating the largest number of indictable complaints until circumstances allow appearance at all probable cause hearings. Assistant prosecutors appearing in municipal court must secure all of the written reports required prior to the scheduled date of the probable cause hearing.

In some counties special Central Judicial Processing programs have been implemented. These programs provide for early review and screening of complaints pending in multiple municipalities at a central location before a single Municipal or Superior Court Judge. In many counties however there are no centralized municipal court programs and probable cause hearings continue to be held at each municipal court.

The decentralized municipal court system does not promote the appearance of assistant prosecutors at probable cause hearings. In spite of the difficulties created by the local judicial structure, County Prosecutors should consider embarking upon a

program of appearing at probable cause hearings. At the appearance, the assistant prosecutor charged with making the screening decision will have an opportunity to personally communicate the key witnesses. Thus, he will be in a better position to make a sound screening decision. It is not satisfactory, however, to substitute this personal contract for the written police reports and statements of witnesses which are normally the foundation of a screening decision. Standard 5 assumes that the Prosecutor will have obtained such material in advance of the probable cause hearing, and his appearance will occur only after full documentation has been received. It can be expected that some police agencies will experience difficulties in submitting the required documentation in a timely manner. These problems must be addressed. The regionalization of municipal courts may be required before County Prosecutor's Office will be able to insure appearance at all probable cause hearings. Nevertheless, much can be accomplished by selection of key municipal court for initiation of this program.

STANDARD 6

> After the probable cause stage, once a decision has been made that no further action should be taken and that a criminal prosecution should be terminated, a memorandum should be prepared reciting the facts and explaining the reasons supporting such a conclusion. The memorandum should then be forwarded to the Prosecutor or his designee for further review. If the Prosecutor or his designee approves the recommendation to administratively terminate prosecution, he should then endorse the memorandum and insure that it is placed in the file. In the situation where a complaint has been filed, the Prosecutor, in addition to a memorandum to the file, should: (1) Notify the assignment judge, and (2) Advise the attorney for the defendant or the defendant if he does not have counsel. See R. 3:25-1. Once notification has been made, action can be taken with reference to the release of the defendant if incarcerated and the return of bail

monies if posted. If the Prosecutor or his designee disapproves of the recommendation, he should so advise the assistant prosecutor handling the matter. The case should then receive appropriate action to insure expeditious disposition.

Standard 6 requires a written statement as to the reasons for terminating prosecution. It also suggests that the interested parties might be informed of the Prosecutor's decision to withhold prosecution in a particular case.

STANDARD 7

If the Prosecutor administratively dismisses a complaint, notification should generally be given to the complainant or victim, the police, and the defendant.

STANDARD 8

When indictable charges pending against defendants in pretrial confinement are downgraded, the disorderly persons offenses resulting may be litigated in the Superior Court, where possible, in order to expedite the final disposition.

Standard 8 recognizes the need for speedy processing of cases. Often a reduction of an indictable charge to a disorderly persons offense will result in the entry of a guilty plea by the accused. Little is gained by transferring paperwork in such cases to the municipal court for the scheduling of such a hearing. Since the County Prosecutor's Office will have prepared the case and consulted with the defense attorney, if any, the case may often be brought to conclusion by prompt appearance at the county level before a trial judge for plea and sentence. If, in a particular case, the matter could be processed more promptly in municipal court, that forum should be utilized. In certain limited instances, an actual trial on the merits on a disorderly

persons charge may be appropriate in the Superior Court with the trial judge sitting as a judge of the municipal court.

STANDARD 9

> Application should be made to the court to dismiss indictments which, upon review, are no longer prosecutable or are inconsistent with the policies in force for accepting a case for prosecution. Review of all indictments (including inactive cases) on file for 12 months or more should be conducted at least annually.

STANDARD 10

> Economical utilization of prosecutorial and judicial resources dictates that all possible charges be disposed of in a single court transaction. Accordingly, when feasible, charges pending against the defendant in municipalities within the county and in other counties within the State should be considered for disposition in a single retraction hearing. See R 3:25-1; R. 3:25A-1.

Standard 10 attempts to deal with the fragmentation which occurs when the behavior of a single offender transgresses a multiplicity of penal statutes and crosses jurisdictional lines. It is appropriate for personnel engaged in the screening process to inventory the charges which are pending against a particular defendant. Often, this information can be extracted from complaints, police reports which have been submitted, as well as from the defendant's criminal history record. Although such a process will involve greater expenditure of time at the screening stage, the net result will be a reduction in the total amount of prosecutorial, police and judicial time devoted to the final resolution of the case. We are, after all, dealing with the behavior of a single individual and often all the charges related to a single, underlying propensity of the defendant. In some instances, the disposition may be made more meaningful to the

defendant and beneficial to society if it can be resolved in a single court transaction utilizing R. 3:25A-1. However, in those instances where a defendant has a lengthy record of prior convictions, the consolidation of offenses will operate to reward a defendant by providing him with only a single conviction for purposes of sentencing as a persistent offender under 2C:44-3.

STANDARD 11

Traffic summonses are not normally remitted to the Prosecutor's Office and need not await the disposition of the indictable offenses, except in the following instances:

a. Where there is a death by auto or assault by auto complaint from the same incident;

b. Where the indictable charges include drug violations and the traffic violations are drug related; e.g., where there is a charge of possession of methamphetamine and the driver is also charged with driving under the influence of a narcotic.

With respect to death by auto, the Supreme Court has issued a directive in State v. Dively, 92 N.J. 573 (1983), requiring a procedure to be established for the Prosecutor to review all cases of careless, reckless, or drunk driving citations where serious personal injury is involved. The Prosecutor will review the matter and reply with directions on whether to proceed with the matter at the municipal level.

PRE-TRIAL INTERVENTION

Assistant Prosecutor Philip H. Coyle
Camden County Prosecutor's Office

Pre-trial Intervention (PTI) exists in New Jersey pursuant to N.J.S.A. 2C:43-12 and R. 3:28. The purposes of Pre-trial Intervention are to:

(1) Provide applicants, on an equal basis, with opportunities to avoid ordinary prosecution by receiving early rehabilitative services or supervision, when such services or supervision can reasonably be expected to deter further criminal behavior by an applicant, and when there is apparent causal connection between the offense charged and the rehabilitative or supervisory need, without which cause both the alleged offense and the need to prosecute might not have occurred; or

(2) Provide an alternative to prosecution for applicants who might be harried by the imposition of criminal sanctions as presently administered, when such an alternative can be expected to serve as sufficient sanction to deter criminal conduct; or

(3) Provide a mechanism for permitting the least burdensome form of prosecution possible for defendants charged with "victimless" offenses; or

(4) Provide assistance to criminal calendars in order to focus expenditure of criminal justice resources on matters involving serious criminality and severe correctional problems; or

(5) Provide deterrence of future criminal or disorderly behavior by an applicant in a program of supervisory treatment.

[N.J.S.A. 2C:43-12(a)]

Admission into the Pre-trial Intervention Program must be measured according to the applicant's amenability to correction, responsiveness to rehabilitation and the nature of the offense.

N.J.S.A. 2C:43-12b. While R. 3:28, Guideline 2 makes it clear that any defendant accused of crime shall be eligible for admission into a PTI Program,[1] it should be pointed out despite amenability to correction and responsiveness to rehabilitation, where appropriate, PTI may be rejected solely on the nature of the offense charged. State v. Leonardis II, 73 N.J. 360, 382 (1977).

R. 3:28, Guideline 6 recommends that applications for admission into PTI should be made as soon as possible after commencement of proceedings. Where an indictment has been returned, the application must be made within seven days of the entry of the initial plea.

Decisions made by prosecutors and program directors in approving or disapproving applications for PTI must be reduced to writing and provided to the defendant. R. 3:28, Guideline 8. While a rejection of an applicant need not be a detailed report, that rejection must outline individual factors in the defendant's background or the offense which prompted the rejection. State v. Sutton, 80 N.J. 110, 117 (1979).

All decisions regarding application for PTI must be based on the appropriate statute and Guidelines. "They (the Guidelines) are intended to provide both the flexibility and the uniformity which is necessary in order to carry out the goals of the program." Leonardis II, supra, 73 N.J. at 384. N.J.S.A. 2C:32-

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[1]Supervisory treatment may occur only once. Defendants previously diverted may not be admitted into the PTI Program. N.J.S.A. 2C:43-12g, R. 3:28, Guideline 3(g).

12e requires that prosecutors and program directors base their decisions on these criteria:

(1) The nature of the offense;

(2) The facts of the case;

(3) The motivation and age of the defendant;

(4) The desire of the complainant or victim to forego prosecution;

(5) The existence of personal problems and character traits which may be related to the applicant's crime and for which services are unavailable within the criminal justice system, or which may be provided more effectively through supervisory treatment and the probability that the causes of criminal behavior can be controlled by proper treatment;

(6) The likelihood that the applicant's crime is related to a condition or situation that would be conducive to change through his participation in supervisory treatment;

(7) The needs and interests of the victim and society;

(8) The extent to which the applicant's crime constitutes part of a continuing pattern of anti-social behavior.

(9) The applicant's record of criminal and penal violations and the extent to which he may present a substantial danger to others;

(10) Whether or not the crime is of an assaultive or violent nature, whether in the criminal act itself or in the possible injurious consequences of such behavior;

(11) Consideration of whether or not prosecution would exacerbate the social problem that led to the applicant's criminal act;

(12) The history of the use of physical violence toward others;

(13) Any involvement of the applicant with organized crime;

(14) Whether or not the crime is of such a nature that the value of supervisory treatment would be outweighed by the public need for prosecution;

(15) Whether or not the applicant's involvement with other people in the crime charged or in other crime is such that the interest of the State would be best served by processing his case through traditional criminal justice procedures;

(16) Whether or not the applicant's participation in pretrial intervention will adversely affect the prosecution of co-defendants; and

(17) Whether or not the harm done to society by abandoning criminal prosecution would outweigh the benefits to society from channeling an offender into a supervisory treatment program.

In addition to these standards, the Supreme Court has promulgated guidelines concerning eligibility for diversion, R. 3:28, Guideline 3. While these guidelines encompass many of the above criteria, they also enumerate as appropriate factors the applicant's parole and probation status, his previous opportunities for diversion or conditional discharge, and his geographical proximity to treatment facilities. Furthermore, to ensure the most judicious allocation of rehabilitation resources, the Supreme Court guidelines provide that defendants whose convictions will probably result in a suspended sentence without probation or a fine should be rejected.

Any appeal of a PTI rejection must be made within seven days after the rejection notice has been received. R. 3:28, Guideline 6. The appeal is limited to a review of the prosecutor's and/or program director's actions to determine whether or not those actions constituted a gross and patent abuse of discretion. Leonardis II, supra 73 N.J. at 383. If the reviewing court is not

clearly convinced that a PTI rejection constituted a gross and patent abuse of discretion, it must deny the appeal or upon a showing that the PTI rejection was arbitrary or irrational the court may remand the application to the prosecutor for a re-consideration. State v. Dalglish, 86 N.J., 503, 515 (1981).

If the designated PTI Judge orders a defendant into PTI over the objection of the prosecutor, the prosecutor may seek leave to appeal to the Appellate Court under R. 2:2. The defendant gets no pre-trial appellate review but may appeal after a Judgment of Conviction is entered even if that judgment is a result of a guilty plea. R. 3:28(f).

BAIL AND PRETRIAL RELEASE

Prosecutor Samuel Asbell
Camden County Prosecutor's Office

R. 3:26-1(a) announces who is entitled to bail before conviction and sets forth the standards for setting such bail as follows:

> (a) Persons Entitled; Standards for Fixing. All persons, except those punishable by death when the prosecutor presents proof that there is a likelihood of conviction and reasonable grounds to believe that the death penalty may be imposed, shall be bailable before conviction will insure their presence in court when required, having regard for their background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detention. In its discretion the court may order the release of a person on his own recognizance and may impose terms or conditions appropriate to such release. [Ibid.]

Thus, the court rule adopts a general policy against unnecessary sureties and detentions. Ibid.

In State v. Johnson, 61 N.J. 351 (1972), the Court explained that "... this right to bail means that the accused has the right to pretrial liberty on such bond in such amount as in the judgment of the trial court under the circumstances of the case will insure his appearance at trial." Id. at 359-360. The Court went on to note that if evidence is presented "... that regardless of the amount of bail fixed, the accused if released will probably flee to avoid trial, bail may be denied." Id. at 360.

The Johnson Court enumerated the following eight factors to be considered in fixing the amount of the bond:

> (1) the seriousness of the crime charged against the defendant, the apparent likelihood of conviction and the extent of the punishment prescribed by the Legislature. It may be recognized that the same urge for flight is not present where the death penalty is not involved. But exposure to a life sentence for murder may well stimulate a substantial urge to flee-even if not as intense as where the accused faces the possibility of death. And the urge may intensify in the future if the recent elimination of the death penalty results in a more restrictive parole policy;
>
> (2) the defendant's criminal record, if any, and previous record on bail, if any;
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> (3) his reputation, and mental condition;
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> (4) the length of his residence in the community;
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> (5) his family ties and relationships;
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> (6) his employment status, record of employment and financial condition;
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> (7) the identity of responsible members of the community who would vouch for defendant's reliability;
>
> (8) any other factors indicating defendant's mode of life, or ties to the community or bearing on the risk of failure to appeal. [Id. at 364-356; citations omitted; note omitted].

The Court went on to caution trial courts not to lose constitutional perspective. Id. at 365. The amount of bail should not be excessive. Ibid. Even though the indigency requires consideration, it cannot outweigh the nature of the crime as a prime consideration in setting bail. Ibid.

Finally, the Johnson Court noted that imposition of conditions on pre-trial bail liberty is a matter for the discretion of the trial court. Id. at 304. Such discretion must be exercised reasonably "... having in mind that the primary purpose of bail in this State is to insure presence of the accused at the trial, and that the constitutional right to bail should not be unduly burdened." Ibid.

In State v. Campisi, 64 N.J. 120 (1973), the Court said that it was appropriate for the trial court to consider sealed grand jury material for use in its discretionary determination as to the amount of bail which would be required to insure defendant's appearance at trial. Id. at 121-122. Thus, such materials may be submitted ex parte, in camera to the court to support the amount of bail fixed. But caution should be urged that such materials should be ultimately made available to defense counsel and without an unreasonable delay in the time between the fixing of bail and the proper release of such sealed material. Campisi, 64 N.J. at 121.

R. 3:26-1(a) further provides that a person charged with a crime punishable by death is not entitled to bail only when the prosecutor presents proof that there is a likelihood of conviction and presents reasonable grounds to believe that the death penalty may be imposed. Ibid.; State v. Engel, 99 N.J. 453, 458 (1985). In State v. Engel, the Court extensively discussed this issue. The Engel Court specifically addressed the issue of what standards to utilize regarding the admission of a co-defendant's hearsay confession in determining whether to deny defendant bail. 99 N.J.

at 456. The Court held that at a bail hearing involving a defendant's admission to bail a co-defendant's confession can be considered if (1) the confession is more probative on the point for which it is offered than any other evidence that the State can procure through diligent efforts under all of the circumstances, and (2) the confession is sufficiently trustworthy or circumstantial corroboration of the confession renders it sufficiently trustworthy. Id. at 468. The Court discussed how to determine if a statement is trustworthy and gave the State the right to present circumstantial corroboration if it cannot establish the trustworthiness of the statement of its face. Id. at 468-470.

The Engel Court also explained that the State has the burden to establish that reasonable grounds exist to believe the death penalty may be imposed. Id. at 471. At the bail hearing, the court is to only determine whether an aggravating factor exists which if credited and accepted by the jury would allow it to impose the death penalty. Ibid. At this stage, the court may also admit hearsay evidence in the form of a co-defendant's confession. Id. at 472.

Finally, the Engel Court held "... that the State must make a reasonable showing that the substance of the proffered hearsay will in some competent form be available for use at the defendant's trial." Id. at 472. Thus the State has the burden at the bail hearing to show that there is a likelihood that the substance of the hearsay evidence, by virtue of an exception to

the hearsay rule or in some other competent form, will be admitted and used at trial. Ibid.

R. 3:3-1 provides guidance for determining whether to initially issue a summons of an arrest warrant to an accused. This initial determination is made by the judge of a court having jurisdiction in the municipality in which the offense is alleged to have been committed or in which defendant may be found, or by the clerk or deputy clerk of that court. R. 3:3-1(a). A summons or warrant may issue only if it appears from the complaint or from an affidavit or deposition taken under oath that there is probable cause to believe that an offense has been committed and that defendant has committed it. R. 3:3-1(a). A summons shall issue unless the judge or clerk finds that any of the following conditions exists:

> (1) The accused is charged with murder, kidnapping, aggravated manslaughter, manslaughter, robbery, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, aggravated assault, aggravated arson, arson, burglary, violation of the Controlled Dangerous Substances Act, excluding minor possessory offenses, any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes;
>
> (2) The accused has previously failed to respond to a summons;
>
> (3) The judge or clerk has reason to believe that the accused is dangerous to himself, to others or to property;
>
> (4) There are one or more outstanding arrest warrants for the accused;
>
> (5) The whereabouts of the accused are unknown and an arrest warrant is necessary to

subject him to the jurisdiction of the court; or

(6) The judge or clerk has reason to believe that the accused will not appear in response to a summons. [R. 3:3-1(b)].

If one of the above conditions exists, then a warrant shall issue. Furthermore, R. 3:4-1(c) provides that the officer in charge of the station shall, after completion of all post-arrest identification procedures required by law, prepare a complaint-summons, issue it to the person arrested and release that person in lieu of continued detention unless it is for an offense enumerated in paragraph (b) of R. 3:4-1(c). R. 3:4-1(c). R. 3:4-1(b) requires that a complaint-warrant be issued if the arrest is for one of the following offenses:

> ... murder, kidnapping, aggravated manslaughter, manslaughter, robbery, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, aggravated assault, aggravated arson, arson, burglary, violations of the Controlled Dangerous Substances Act, excluding minor possessory offenses, any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes ... . [R. 3:4-1(b)].

It is to be noted that cash bail is not the sole method of securing pre-trial release. The following are forms of pre-trial release which may be utilized in appropriate cases:[1]

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[1]The numerous types of pre-trial release are roughly equivalent to R. 46 of the Federal Rules of Criminal Procedure (Practice Comment) concerning release from custody.

A. ROR or COP. This release is in the defendant's own or Chief Probation Officer's[2] recognizance and is premised upon a promise to appear.

B. Personal Recognizance Bail. This release is similar to ROR except that the Court sets the cash amount the person is personally liable to forfeit. Although no security is required, the person must execute a bond.

C. Co-Signed Unsecured Appearance Bond. This occurs when an individual, other than the defendant, becomes obligated on the bond in the event of default although no security is required.

D. Released in Custody of Specified Individual. This individual is required to report to the court if the defendant defaults.

E. 10% Cash Bail - R. 3:26-4(a). Defendant may post 10% cash bail in those counties where the assignment judge institutes this program.

F. Bail Bond. Provides for corporate sureties for a 10% premium.

G. Real Property Bond. Defendant is required to provide the County Clerk with the appropriate deed.

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[2]Terms and conditions may be imposed upon a defendant when he is released ROR but there is no rule or statute dealing with what the conditions would be. Cf. A.B.A. Pre-Trial Release, §5.6.

H. Personal Property Bond. Defendant pledges bank book stocks and bonds which are deposited with the clerk of the court.

I. Cash. R. 3:26-4(f),[3]

It must be emphasized, however, that there is no presumption that a defendant be released on his own recognizance. Rather, the requirement is that there shall be no unnecessary sureties and detention. Since the primary purpose of bail is to assure the accused at trial,[4] it is incumbent upon the court to fix bail in an amount commensurate with the risk of flight.

If the defendant fails to appear at any proceeding requiring his presence, the Prosecutor should seek a bench warrant and bail should be revoked and forfeited. R. 3:3-1. Although it is the court clerk's duty to insure the issuance of the bench warrant, the prosecutor should request a copy for his records. A copy should be forwarded to the sheriff. A system should be developed to record the costs of locating and returning fugitives.[5] Under no circumstances should the prosecutor unilaterally consent to the vacating of bail forfeiture or reinstatement of bail absent the

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[3]Under R. 3:26-4(f), if the cash is deposited by someone other than the defendant, the defendant must supply an affidavit as to ownership.

[4]Johnson, supra, 61 N.J. at 359. Note that the Johnson Court did not adopt "preventive detention" i.e., likelihood of serious crime or interference with administration of justice as factors for bail. Id. at 362. But compare A.B.A. Pre-Trial Standards, §5.1.

[5]R. 3:26-6(c). State v. Hyers, 122 N.J. Super. 177 (App. Div. 1973).

appearance and consent of the county counsel or the appropriate municipal attorney. R. 3:26-6.[6]

Bail may also be in issue with respect to material witnesses. Pursuant to N.J.S.A. 2A:162-2, 2A:162-3 (commonly referred to as the Material Witness Statute) and R. 3:26-3, any judge may require that a witness to any crime punishable by imprisonment in State prison be held for the purpose of securing his appearance. A material witness is, however, entitled to be bound "by recognizance with sufficient surety." Of course, whether to bind such a witness is a matter resting within the discretion of the court. The court must be satisfied that the witness is necessary and material. The court must also be satisfied that if the witness is not bound by sufficient surety he may become unavailable to service by subpoena.

Finally, In the Matter of Basto, 108 N.J. 480 (1987), the Court held that N.J.S.A. 2A:160-24, the bail provision of the Uniform Criminal Extradition Act, is properly construed to provide bail for nonfugitive extraditee at the post-warrant stage of proceedings while pending a habeas corpus hearing and any appeal therefrom. Id. at 483, 491. The Supreme Court affirmed the

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[6]County counsel has the duty to collect bail on indictable offenses once the forfeiture order has been entered by the court. Any money received goes to the county. The factors to be used by the court in determining if any bail should be remitted are:

1. Nature of applicant i.e., defendant, surety, commercial surety, etc.
2. Diligence of surety, if any, in carrying out his obligation to the court.
3. Prejudice to State occasioned by the delay.
4. Expense in returning defendant.
5. Intangible element of injury to the public interest.
6. Exhaustion by surety of available legal remedies (against principal).

judgment of the Appellate Division but on a more narrow basis and limited the scope of its holding to nonfugitive extraditees. Id. at 483. The Court reiterated that the power to admit to bail must be circumspectly exercised because once the Governor has exercised his discretion in favor of extradition, there is a solemn obligation to deliver up the extraditee to the demanding state if the habeas application is unsuccessful. Id. at 492.

FICTITIOUS COMPLAINTS

Assistant Prosecutor Howard N. Wiener
Union County Prosecutor's Office

The protection of the identity of an informant or undercover police officer will occasionally call for his arrest with suspects. The sham arrest may be for a short time, or, in rare cases, a criminal complaint will be signed to continue the deception beyond the day of the arrest. Of course, the complaint is baseless and will be dismissed when the subterfuge is no longer necessary.

When deciding whether a sham complaint must be used you must expect that eventually all defendants will have to be notified and given complete discovery. Thus, if an informant was protected his identity will be revealed.

This technique should be used only in the most extraordinary cases since it involves the use of a falsely sworn process. In no circumstances should a sham complaint be sworn to without prior authorization and judicial approval.

In 1979 an assistant prosecutor was reprimanded by the New Jersey Supreme Court for his role in a case where several persons including an undercover police officer and an informant were arrested.

In order to keep their true identities confidential, fictitious criminal complaints were issued. Their true identities were never revealed to the defendants despite a discovery request by

the defense attorney. In order to maintain the deception the assistant prosecutor was forced to supply incomplete, inaccurate and misleading information about the police officer and informant.

Although the means used were unacceptable, more severe sanctions were not imposed because the Supreme Court found that the assistant prosecutor acted without improper motive.

Prior to the issuance of a fictitious warrant the following steps must be taken:

1. approval must be obtained from the Prosecutor or his designee;

2. an in-camera hearing shall be conducted by the Assignment Judge or his designee at which the reasons for the fictitious complaint will be presented. If the Court is satisfied that the fictitious complaint is justified the judge will authorize an application for a complaint. The Assignment Judge may issue the complaint or permit the application before another judge;

3. after the necessary approvals have been obtained application for the complaint may be made to any court without disclosing its true nature;

4. disclosure should be made as early as practicable but in no event should the deception continue beyond the discovery period.

THE GRAND JURY

Assistant Prosecutor Harold I. Kasselman
Camden County Prosecutor's Office

1. Prosecutors should ensure that the grand jury is fully apprised of its role and responsibilities by a supplemental orientation at the first meeting after the assignment judge charges the grand jury. Some of the Germane Topics are as follows:

   a. A brief description of the Criminal Justice System from the signing of the complaint through a trial or guilty plea.

   b. A description of prosecutorial screening before grand jury but with a caveat that this does not suggest a belief that the prosecutor is implicitly seeking indictments on all cases sent to the grand jury.

   c. The meaning of a prima facie case. The grand jury should be advised that it will not be necessary to call all possible witnesses in the case to prove a prima facie case but that it has the right to ask for additional testimony.

   d. Choices available to the grand jury including true bill, no bill, remand to municipal court, presentment, and their implications.

   e. Mechanics of voting, including motions for true bill, seconding the motion, and requirement of twelve affirmative votes.

Note
The Attorney General and the County Prosecutors Association prepared and published the New Jersey Grand Jury Manual. The Manual is comprised of sections comprehensively exploring the subject matter of these standards. Thus, this chapter treats questions pertaining to the grand jury in a brief and summary fashion.

f. The grand jury should be advised that on occasion the prosecutor will recommend that a matter be remanded or no billed even where a prima facie case exists. The reasons for such a recommendation should be explained to the jury, e.g., the probability of conviction is remote, etc.

g. Functions of the prosecutors, foreman, deputy foreman, court clerk, and court reporter.

h. The need for secrecy of grand jury proceedings.

i. A reminder of the consequences of potential juror bias and the procedure to be used by virtue of State v. Murphy.

j. The reasons for the absence of the defendant at the hearing. Alternatively an explanation of under what circumstances a defendant may be invited to appear.

2. The role of the prosecutor is to act as legal advisor to the grand jury and to present evidence. The prosecutor may not participate in its deliberations, express his view on questions of fact, or attempt to direct the grand jury in its findings. The prosecutor may in an appropriate case:

a. Describe the possible charges and the constituent legal elements.

b. Briefly explain the expected testimony.

c. Recommend no bill or remand to municipal court in cases where he feels the probability of conviction is remote or there is reasonable doubt as to the defendant's guilt.

d. Prevent witnesses from giving irrelevant or otherwise improper testimony.

e. Cross-examine witnesses that appear to be evasive, inconsistent, hostile, or untruthful.

f. Explain testimony in the context of the law governing the case.

g. Describe the offense in terms of the extent of harm actually caused and its relation to the authorized punishment.

h. Discuss possible improper motives of a complainant or witness.

i. Describe the prolonged nonenforcement of a statute with community acquiescence.

j. Describe the cooperation of the accused in the apprehension or conviction of others.

k. Describe the availability and likelihood of prosecution by another jurisdiction.

3. Each case should be reviewed by at least one assistant prosecutor prior to being scheduled for the grand jury. This review is to assure that the case is complete, identify the witnesses to be called and analyze the potential charges. The following materials should be in the case file prior to grand jury presentation.

a. Complaint.

b. Police reports (Including incident, arrest and investigative reports).

c. Statements of witnesses.

d. "RAP" sheets (State and Federal).

e. Certified or exemplified copies of Judgments of Conviction.

f. Scientific reports.

1) Firearms, drugs, or other laboratory reports.

2) Handwriting reports.

3) Fingerprint reports.

g. Search warrants, affidavits and inventory returns.

h. Business records or official certifications.

i. Medical reports.

j. Photographs or other types of demonstrative evidence and an indication of the witnesses necessary to identify same.

k. Statements made by the defendant and police reports concerning the circumstances surrounding the making of those statements.

l. Reports and documents (photographs, transcripts, etc.) concerning any pre-trial identification made of the defendant.

m. Evidence report (a complete inventory including the location of all evidence and the persons involved in the chain of evidence).

n. A list of potential witnesses including their date of birth, sex, residence, business, and telephone number.

o. A summary of the case prepared by a prosecutor's office detective or investigator.

p. Preliminary hearing transcript.

q. Legal analysis by reviewing assistant prosecutor.

r. Correspondence section (kept in chronological order).

4. In scheduling cases for the grand jury, the prosecutor should assign priority in the following order unless a specific local speedy trial program dictates otherwise:

a. Jail cases.

b. Homicide cases.

c. Other impact crimes.

d. All others.

5. In preparing a case for presentation to the grand jury it is the function of the prosecutor to determine what potential charges may be considered. The prosecutor should consider the following facts:

a. The proofs to be offered at trial and the possible charges thereunder.

b. Complexity of the ultimate charge to the trial jury.

c. Effect of charges on potential plea negotiations.

d. Merger of offenses.

e. Limited sentence exposure for less serious crimes.

6. The prosecutor should consider combining cases involving multiple jurisdictions. The appropriate prosecutors should determine which county ought to prosecute on the basis of the greatest contact with the criminal acts, victims or witnesses and the true situs of the offense. See R. 3:14-1.

7. It is normally advantageous to join multiple offenses for trial. The prosecutors should therefore endeavor to join in

a single indictment not only those offenses for which joinder is mandatory (R. 3:15-1), but also those for which joinder is permissible.

8. if possible witnesses in complex or sensitive cases should be interviewed before their grand jury appearance.

9. Witness examination should be brief with concentration on the elements that must be shown to establish a prima facie case. Leading questions may be appropriate to assure that the witness' testimony directly relates to the elements of the potential offense or offenses.

10. After the prosecutor has conducted his examination of the witness, the grand jurors should be asked whether they wish to question the witness. To avoid improper, irrelevant, or repetitious questions it may be advisable that the witness be asked to leave the room so that the grand jury's questions may be reviewed by the prosecutor to determine their legal efficacy.

11. The prosecutor should endeavor to allow putative defendants who request to be heard by the grand jury to do so. In the absence of such a request the prosecutor may also consider inviting a putative defendant to appear in selected cases. If a putative defendant wishes to appear before the grand jury, he should be given "target" warning. Written waivers are not necessary provided a waiver is clearly reflected on the stenographic record.

12. Prosecutors are not now under a duty to present exculpatory evidence to a grand jury. Yet practicalities and fairness suggest that if such evidence "clearly negates" guilt it should be presented.

13. In those situations in which potential grand jury witnesses are the subject of cross-complaints arising from the same factual transactions, such persons should be subpoenaed to appear before the same grand jury and should be advised of the existence of the criminal complaints and given their target warnings and appropriate waivers procured.

14. Prosecutors should, as a general rule, seek to present admissible evidence to the grand jury. So too, evidentiary privileges should be honored at the grand jury stage of 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. In all other instances where the 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.

a. An exception to this general rule exists with respect to investigate grand juries which must sift through all available clues to determine whether a crime has been committed.

b. An exception to this general rule exists with respect to expert witnesses. Where an expert would merely testify as to the contents of his report, his presence before the grand jury would not be needed.

c. With regard to exceptions to the general rule, the prosecutor should clearly inform the grand jury of the availability of better or firsthand evidence so that it can, if it wishes, request presentation of such proofs.

15. The grand jury has the authority to issue subpoenaes to gather evidence. The prosecutor has no such power. To assist the grand jury, the prosecutor may issue the grand jury's subpoena for evidence gathering purposes. The power to issue grand jury subpoenaes is limited to the prosecutor and his assistant prosecutors. County detectives or investigators or police officers have no such authority unless delegated by the prosecutor. County investigators or police officers are not to be given blank subpoenaes or the authority to issue the same based on their own discretion. Police officers have no authority to issue their own subpoenaes except as provided by R. 7:3-3. As a general rule, prosecutors should direct that the service of all subpoenaes be authorized by an assistant prosecutor. Once the subpoena is authorized, it can be served by a police officer or anyone else eighteen (18) years old or older.

16. 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 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.

17. Upon the return of a "true bill" by the grand jury, the indictment must be presented in open court to the assignment judge or other judge authorized by R. 3:6-8(a) to receive indictments. Such action may be performed by the foreperson or deputy foreperson of the grand jury. The indictment is sufficient if it consists simply of a written statement of the essential facts constituting the offense charged and a citation to the specific statute or statutes allegedly violated. Each indictment must be signed by the prosecuting attorney and endorsed as a true bill by the foreman or, in his absence, by the deputy foreman. R. 3:7-3.

COMMENTARY

New Jersey is one of the most densely populated and highly urbanized states in the Nation. Therefore, it is not surprising that our law enforcement officials are continually engaged in combatting the ugly realities of crime. Yet, despite the difficulties of this task, we have maintained a high level of respect for the rights of those accused of criminal wrongdoing. This tradition has been manifested, in large measure, by the safeguards provided those who have become the focus of grand jury inquiries.

The ability of the grand jury to prevent unwarranted prosecutions and to act independently has been the subject of much public debate. Yet, the charge that prosecutors abuse their powers in grand jury proceedings is wholly unsubstantiated in New Jersey. In point of fact, specific instances of prosecutorial misconduct have been rare in our State. We believe that the success of the New Jersey system is premised largely on our efforts to professionalize law enforcement. Close supervision of well-trained professionals is the best guarantee against prosecutorial excesses.

Toward this end, the Attorney General of New Jersey and the County Prosecutors' Association commissioned a task force consisting of prosecutors and members of the Division of Criminal Justice to prepare a grand jury manual for the use of State and local law enforcement agencies. Our efforts were designed to

select the best procedures presently in force as opposed to merely weeding out the worst.

The manual, in its completed form, extensively sets forth recommended practices for prosecuting attorneys in presenting cases to grand juries. It provides for uniformity of prosecutorial conduct in every grand jury in New Jersey. It also constitutes a valuable orientation document for newly appointed Deputy Attorneys General and Assistant Prosecutors.

The manual, the first of its kind, codifies the best practices presently utilized by state and local prosecutions in presenting matters to grand juries. It provides a comprehensive statement of the prosecutor's duties and ethical obligations before the grand jury. The manual addresses such important areas as grand jury orientation, the role of the prosecutor in grand jury proceedings the rights and duties of witnesses appearing before the grand jury, standards for determining whether the immunity should be employed as an investigative tool, guidelines for dissemination of information to the media, preparation of cases prior to presentation to the grand jury and post-indictment procedures. The textual portion of the manual has been supplemented with an extensive appendix consisting of model forms for use during the investigative phase of the grand jury function.

In sum, our Grand Jury Manual was the product of a painstaking effort to define the rational bounds of prosecutorial discretion. It seeks to facilitate the need for a flexible system, which ensures individual rights, while permitting

prosecutors to have sufficient authority to fulfill their sworn duties. Adherence to the articulated standards set forth in the manual will ensure that prosecutors in New Jersey will continue to be solicitous of the rights of defendants and witnesses in grand jury proceedings.

The standards set forth here reflect many of the principles and guidelines described in greater detail in the Grand Jury Manual. We emphasize that while these standards serve as a handy reference guide, all prosecutors and their assistants should carefully review the Grand Jury Manual.

JOINDER AND SEVERANCE

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1. R. 3:15-1 authorizes joinder under the following circumstances:

   a. Permissible Joinder. The courts may order 2 or more indictments or accusations tried together if the offenses and the defendants, if there are 2 or more, could have been joined in a single indictment or accusation. The procedure shall be the same as if the prosecution were under such single indictment or accusation.

   b. Mandatory Joinder. Except as provided by R. 3:15-2(b), a defendant shall not be subject to separate trials for multiple criminal offenses based on the same conduct or arising from the same episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction and venue of a single court.

2. It is incumbent on the prosecutor to ensure that:

   a. All offenses based on the same conduct or arising from the same criminal episode or transaction are joined in the same indictment or accusation;

   b. Before returning an indictment or filing an accusation, and before moving a case for trial, the prosecutor must check with the prosecutor of any other county where the transaction occurred to ascertain his interest in the matter of the status of pending charges in that county; and,

   c. That each non-indictable offense related to the indictable (pending in the municipal courts) are referred to the Prosecutor's Office with the indictable complaint.

COMMENTARY

In State v. Gregory, 66 N.J. 510 (1975), the Supreme Court adopted a mandatory joinder requirement to prevent separate trials

for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of a single court. The Court adopted the mandatory joinder rule of the Model Penal Code §1.07(2) and (3)), see 55 N.J. at 519, 522, pending the "preparation of the precise contours and details of the compulsory joinder rule" by its Criminal Practice Committee "for ultimate consideration and promulgation" by the Court. State v. Gregory, supra, 66 N.J. at 522. The new Rule 3:15-1(b) was drafted as the Committee's response to the Supreme Court's request, and it was adopted by the Supreme Court to be effective September 6, 1977. Paragraph (b) was amended effective January 1, 1988 to conform with N.J.S.A. 2C:1-8b. According to the Report of the Criminal Practice Committee, no substantive change was intended. See 120 N.J.L.J. Index Pages 137-38 (1987).

Rule 3:15-1(a) provides for "permissible joinder." The standard for determining when two or more indictments or accusations may be tried together is actually set forth in R. 3:7-6[1] to which R. 3:15-1(a) in effect refers when it states that the

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[1]Rule 3:7-6 entitled "Joinder of Offenses," provides:

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

procedure shall be the same as if the prosecution were under such single indictment or accusation.[2]

Paragraph (b) of Rule 3:15-1 essentially incorporates the language of Section 1.07(c) of the Model Penal Code (Proposed Official Draft 1962) and is entitled "Mandatory Joinder." This distinction between permissible and mandatory joinder of criminal offenses is analogous to that drawn by Standards 1.1 and 1.3 of the A.B.A. Project on Minimum Standards for Criminal Justice, Standards Relating to Joinder and Severance (Approved Draft).

As noted in R. 3:15-1(b) the failure to join indictable offenses, where such joinder is mandatory, operates as a bar to the subsequent prosecution of the offenses that should have been joined with the first. E.g., State v. James, 194 N.J. Super. 362 (App. Div. 1984). However, the underlying policies, rather than technisms, should be the touchstone, and the primary considerations should be fairness and the fulfillment of the reasonable expectations of defendant that related offenses will be disposed of simultaneously. Gregory, supra; State v. Tsoi, 217 N.J. Super. 290, 295 (App. Div. 1987).

The requirements of R. 3:15-1(b) mandate that only indictable offenses be joined; non-indictable offenses need not be joined with indictables. See, e.g., State v. Saulnier, 63 N.J. 199 (1973); State v. McGrath, 17 N.J. 41 (1954); Tsoi, supra.. The

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[2]Rule 3:15-1(a), through R. 3:7-6(a), will not identify "...the outer limits of permissible joinder of offenses." Commentary to Standard 1.1, A.B.A. Project on Criminal Justice Standards Relating to Joinder and Severance (Approved Draft) page 10. The language of R. 3:15-1 also provides a vehicle for prosecutors to move for joinder not perfected (under R. 3:7-6) in the same indictment or accusation.

rule also provides that indictable offenses based upon the same conduct or arising from the same episode must be joined if such offenses are known to the appropriate prosecuting officer at the time of commencement of the first trial. See State v. Tamburro, 137 N.J. Super. 51 (App. Div. 1975); Tsoi, supra. The phrase "appropriate prosecuting officer" does not apply to municipal prosecutors. Tsoi, supra, 217 N.J. Super. at 296. However, county prosecutors must endeavor to ascertain the existence of any related non-indictable offenses to guard against the possibility that disposition of non-indictable offenses may bar, under principles of double jeopardy, due process or collateral estoppel, the subsequent prosecution of indictable offenses. The courts have recognized the need for strong administrative action to prevent the disposition of non-indictables at the municipal level prior to disposition of related indictables. The Supreme Court has directed the municipal court judges to refer any complaints, where there is reason to believe an indictable offense may be involved, to the county prosecutor. See State v. Dively, 92 N.J. 573, 589-590 (1983). It has also specifically directed municipal judges to withhold actions on drunk driving incidents involving personal injury until clearance has been obtained from the county prosecutor. Ibid.

It must be noted that the provision of R. 3:15-1(b) requiring joinder of indictable offenses "within the jurisdiction and venue of a single court" does not mean that only indictable offenses occurring within a single county must be joined. Pursuant to R.

3:14-1, offenses committed in more than one county may be prosecuted in any one of those counties. Thus, multi-county offenses that arise out of the same conduct or episode must be joined. State v. James, 194 N.J. Super. 362 (App. Div. 1984).

The new R. 3:15-1(b) places the burden on the prosecuting attorney to insure that all charges which must be joined are so joined. Some consideration was given to the possibility of placing the burden of moving for mandatory joinder on the defendant. The Model Penal Code provisions place the burden squarely on the prosecuting attorney, but the A.B.A. Standard (§1.3(b)) places it upon the defendant. The Criminal Practice Committee noted that the Supreme Court, in State v. Gregory, supra, clearly recognized this distinction (66 N.J. at 519 n.4) in the course of implementing sections 1.07(2) and (3) of the Model Penal Code. See 99 N.J.L.J. 394 (May 6, 1976). The Supreme Court adopted the Committee's position in adopting R. 3:15-1(b). The Appellate Division has recommended the amendment of the Rule to conform with A.B.A. Standard 13-2.3(b), which provides that failure of a defendant to move for joinder operates as a waiver of the right to joinder of offenses. See State v. Muscia, 206 N.J. Super. 551, 555-56 (App. Div. 1985). Thus far, the Standard has not been adopted, although the court in Musica suggested the failure to move for joinder might be considered as part of the "totality of circumstances" in considering whether failure to join offense bars a subsequent prosecution. Ibid.

Despite the fact that the rule (1) places no affirmative duty on the prosecutor to investigate other charges which might be

involved in the episode or transaction, (2) does not require (or even permit) joinder of non-indictable offenses in an indictment or accusation with indictable charges and (3) is limited to indictable offenses, and (4) applies, on its face, only "if such offenses are known to the appropriate prosecuting attorney at the time of the commencement of the first trial," we believe that all prosecutors must endeavor to ensure that all non-indictable offenses related to indictables are referred to the prosecutor together with the indictable. Before returning an indictment, filing an accusation, or commencing trial, the prosecutor of the forum county should communicate with the prosecutor of any other county which might have an interest in the criminal transaction to ascertain the status of his investigation into the matter.

This procedure is required by virtue of the decisions involving double jeopardy and collateral estoppel. If the disposition in municipal courts or in a foreign county involves either a lesser included offense or an issue of fact necessarily determined, subsequent reprosecution may be barred. See e.g., Harris v. Oklahoma, 433 U.S. 682, S.Ct. 2912, 53 L.Ed.2d 1054 (1977); Brown v. Ohio, 432 U.S. 161, 97 S.Ct. 2221 (1977); Waller v. Florida, 397 U.S. 387, 90 S.Ct. 1184, 25 L.Ed.2d 435 (1970); Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970). See also State v. Redinger, 64 N.J. 41 (1973); State v. Bell, 55 N.J. 69 (1975); State v. Truglia, 97 N.J. 513 (1984), and "election" State v. Godfrey, 139 N.J. Super. 135 (App. Div. 1976). As a result:

1. All complaints related to an indictable charge should be referred to the prosecutor with the indictable. The Administrative Office of the Courts has made clear that, if the indictable offense is no billed, the non-indictable may be remanded for disposition in the municipal courts, but if an indictment or accusation is filed, where possible, the non-indictables should be disposed of as part of a "plea package" in the upper courts, R. 3:9-3; 3:25A-1; or if the indictable is disposed of at trial, the upper court, after hearing from the parties, should determine whether the double jeopardy clause or doctrine of collateral estoppel requires dismissal in lieu of remand.[3] To effect this standard, an investigator in the Prosecutor's Office, during the case screening process, should contact the municipal court to make sure all non-indictable offenses (referred to in the incident or arrest reports) are referred to the Prosecutor. As a double check, he should communicate with the municipal court clerk to ascertain if the docket index reveals any pending matters against

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[3]The Supreme Court has suggested that, in cases involving indictable offenses with related (but not lesser-included) non-indictable offenses, the Superior Court Judge may simultaneously preside over a jury trial of the indictable offenses and a non-jury trial of the non-indictable offenses (as a municipal court judge). If, after hearing the case, the judge determines that double jeopardy would bar prosecution for the lesser offense (as where the State relies upon the same proofs to establish the lesser and greater offenses), the jury's determination on the indictable offense will preclude conviction for the non-indictable. State v. DeLuca, 108 N.J. 98, 111 (1987), cert. den. ___ U.S. ____, S.Ct. 331 (1987).

If the related non-indictable charges other than the defendant, it should be referred to the prosecutor with the indictable so that defendant is not called as a witness at the trial on the non-indictable, thus raising various Fifth Amendment questions. The non-indictable can be remanded for disposition by the prosecutor after disposition of the indictable.

the defendant or the complaining witness. The latter procedure may be avoided where the prosecutor periodically, by letter, reminds municipal court officials to refer all related non-indictables to the prosecutor with the indictable and the prosecutor is assured that the municipal court is doing so.

2. Before returning an indictment, filing an accusation or commencing trial, the prosecutor should communicate with the prosecutor of any other county which might have an interest in the criminal transaction to ascertain the status of the investigation into the matter. As a matter of uniformity, the inquiry should be in writing addressed to the first assistant prosecutor of the foreign county. If the matter requires emergent attention, the inquiry may be made telephonically and confirmed in writing addressed to the first assistant prosecutor. When a matter is disposed of by plea, the prosecutor should also seek the advice of the foreign prosecutor as to disposition of all charges (and particularly those involving the same episode or transaction) pending in the foreign county. R. 3:25A-1[4] (Failure to communicate with the foreign prosecutor about transactions which may

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[4]Rule 3:25A-1 permits a judge to dismiss an indictment, accusation or complaint pending in another county. The rule was designed to facilitate the simultaneous disposition of all charges pending against a defendant and is not limited to offenses involving the same transaction as that being prosecuted in the forum county. While the prosecutor of the foreign county need not consent to such dismissal, his advice absent extraordinary circumstances should be honored by the prosecutor of the forum county. Where the foreign prosecutor participates in shaping a negotiated plea, which involves disposition (by plea or dismissal of both) of charges pending in the foreign county (as well as in the forum county) the consent of the foreign prosecutor should be confirmed in writing. Prosecutors at the time of negotiating pleas should check rap sheets and endeavor to shape pleas which favorably dispose of all charges pending in the State.

involve his county could affect his ability to subsequently dispose of the charge). If the matter is to be disposed of following the return of an indictment, it should be noted that county grand juries have statewide jurisdiction, and all offenses involving the same transaction should be joined in a single indictment or accusation. State v. DiPaolo, 34 N.J. 279, 284-287 (1961), cert. den. 368 U.S. 880, 82 S.Ct. 130 (1961). This, if two or more counties express interest in prosecuting a matter, the prosecutors themselves (or the first assistant prosecutor in the prosecutor's absence) should decide the forum county. The county where the most serious offense or most serious part of the transaction occurred should generally take responsibility, and the decision should be confirmed in writing.

While a defendant may move for severance and/or a change of venue, the objection to joinder should be deemed a waiver of rights to claim double jeopardy or collateral estoppel. Jeffers v. United States, 432 U.S. 137, 97 S.Ct. 2207, 53 L.Ed.2d 168 (1977).

Pursuant to R. 3:15-2, either the State or a defendant may move for severance if joinder of offenses or defendants is prejudicial to either party. The United States Supreme Court has held that misjoinder under the Federal Rules is harmless error unless the joinder has a substantial and injurious effect or influence in determining the jury's verdict. United States v. Lane, 474 U.S. 438, 106 S.Ct. 725, 88 L.Ed.2d 814 (1986), reh. den. ____ U.S. ____ 106 S.Ct. 1507, 89 L.Ed.2d 907 (1986). As to

what constitutes prejudicial joinder, refer to cases cited under R. 3:15-2.

Finally, with regard to joinder of defendants, R. 3:7-7 provides:

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

Defendants should be joined in the same indictment or accusation in accordance with Standard 1.2 of the A.B.A. Standards Relating to Joinder and Severance. It provides:

> Two or more defendants may be joined in the same charge:
> (a) when each of the defendants is charged with accountability for each offense included;
> (b) when each of the defendants is charged with conspiracy and some of the defendants are also charged with one or more offenses alleged to be in furtherance of the conspiracy; or
> (c) when, even if conspiracy is not charged and all of the defendants are not charged in each count, it is alleged that the several offenses charged:
>
> (i) were part of a common scheme or plan; or
> (ii) were so closely connected in respect to time, place, and occasion that it would be difficult to separate proof of one charge from proof of the others.

See also Standard 2.3, R. 3:15-2 and Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620 (1968), regarding severance Rule 3:15-2(a) which places an affirmative burden on the State and provides:

> (a) Motion by State Before Trial. If 2 or more defendants are to be jointly tried and the prosecuting attorney intends to introduce at trial a statement, confession or admission of one defendant involving any other defendant, he shall move before trial on notice to all defendants for a determination by the court, as to whether such portion of the statement, confession, or admission involving such other defendant can be effectively deleted therefrom. The court shall direct the specific deletions to be made, or, if it finds that effective deletions cannot practically be made, it shall order separate trials of the defendants. Upon failure of the prosecuting attorney to so move before trial, the court may refuse to admit such statement, confession or admission into evidence at trial, or take such other action as the interest of justice requires.

Rule 3:15-2 and the cases cited thereunder should be consulted whenever there are co-defendants to be jointly tried and the State is in possession of a statement from one or more co-defendants.

Note that erroneous failure to sever pursuant to R. 3:15-2(a) is subject to harmless error analysis. State v. Lyons, 211 N.J. Super. 4033 (App. Div. 1986). Also, the failure to sever co-defendant juveniles in a non-jury trial is harmless because the danger noted in Bruton, that a jury might find it impossible to ignore a statement implicating a co-defendant, is absent when the case is tried to a judge alone. State in Interest of R.B., 200 N.J. Super. 573 (App. Div. 1985).

Joinder of defendants is also important because of the opinion of the Supreme Court in State v. Gonzalez, 75 N.J. 13

(1977) although motions to suppress may be made before indictment, see R. 3:5-7. Simultaneous return of an indictment naming all defendants involved in the transaction is important in terms of establishing that defendants involved in the same transaction could simultaneously move to suppress. As stated in State v. Gonzalez, supra:

> Our present rule, R. 3:5-7(a), requires a defendant to bring his motion challenging a search and seizure as unlawful within 30 days after the initial plea to the charge unless the court, for good cause, enlarges the time. Henceforth, the Rule shall be deemed amended to require joinder of all such motions by co-indictees for consolidated consideration in a single hearing. Where a defendant makes a convincing showing that he was unable to participate at a prior suppression hearing in which the challenged search was invalidated, as this defendant has done, and the evidence adduced at both hearings if substantially the same, he should be afforded the right to claim the benefits of such a hearing. However, where a defendant resists such joinder or fails without adequate justification to participate in the consolidated suppression proceeding, a plea of collateral estoppel will be available. In any event, sound practice requires that the same judge who presided over the first suppression hearing should ordinarily hear any later motion arising out of the same transaction.

THE ROLE OF THE PROSECUTOR IN PLEA NEGOTIATIONS AND SENTENCING

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Camden County Prosecutor's Office

1. Each Prosecutor's Office should have definitive policies regarding plea negotiations. The following criteria should be considered in determining what recommendations are warranted.

   a. The nature and seriousness of the offense or offenses charged, i.e., crimes against the person, crimes against property;

   b. An evaluation of the proofs;

   c. An evaluation of the witnesses, i.e., their availability for trial, any identification problems, credibility, relationship to the victim, improper motives, etc.

   d. The circumstances of the victim, i.e., extent of bodily or other personal injury, property rights, economic loss incurred, as well as the feelings and attitude of the victim, including an expressed wish not to prosecute;

   e. The background of the defendant, including his age, family status, work status, prior arrest, juvenile and criminal record, and any relationship between the defendant and the victim.

   f. The attitude and mental state of the defendant at the time of the crime, the time of the arrest, and the time of the plea negotiation;

   g. Any undue hardship caused to the defendant;

   h. The circumstances of the arrest, i.e., where and at what time it was made, was it pursuant to a warrant after several attempts to locate the defendant, or did the defendant voluntarily surrender;

   i. Any past or potential cooperation with law enforcement;

j. Any police recommendations;

k. The moral consequences in the community;

l. The possible deterrent value of prosecution;

m. The age of the case;

n. A history of non-enforcement of the statute violated;

o. Any other aggravating or mitigating circumstances.

2. Each prosecutor's office should have definitive policies regarding the sentencing process. The prosecutor's function does not terminate upon the return of a guilty verdict or the disposition of criminal charges by virtue of a plea agreement.

a. The prosecutor should make a reasoned judgment as to whether a recommendation should be made in a particular case. The considerations set forth in standard I are equally applicable to the sentencing process and include:

(1) The nature of the offense

(2) The effect of the crime on the victim

(3) The background of the defendant

(4) The risk to the public

(5) The possibility of rehabilitation

b. The prosecutor should not make the severity of the sentences the index of his effectiveness. Nevertheless, he must always bear in mind that his primary obligation is to protect the public. The prosecutor, who of course is fully familiar with the facts, is obliged to ensure that the public's right to be protected against criminal attack is respected. To the extent that he becomes involved in the sentencing process, he should seek to assure that a fair and informed judgment is made on the sentence and he must attempt to avoid unfair sentence disparities.

c. The prosecutor should assist the court in basing its sentence on complete and accurate information for use in the presentence report. He should disclose to the court any information in his files relevant to the sentence. If incompleteness or errors appear in the presentence report, he should take steps to present the complete and correction information to the court and defense counsel.

COMMENTARY

Plea negotiation has now been accepted as a legitimate and respectable adjunct of the administration of the criminal laws. R. 3:9-3 codifies certain procedures to the plea negotiation process.

Our Supreme Court has recognized that "there is nothing unholy in honest plea (negotiations) between the Prosecutor and defendant and his attorney in criminal cases. At times, it is decidedly in the public interest, for otherwise, on occasion the guilty would probably go free..." State v. Taylor, 49 N.J. 440, 455 (1967). So too, the Supreme Court of the United States has noted that "the disposition of criminal charges by agreement between the Prosecutor and the accused...is an essential component of the administration of justice. Properly administered, it is to be encouraged. If every criminal charge was subjected to a full-scale trial, the State and the Federal Government would need to multiply by many times the number of judges and court facilities." Santabello v. New York, 404 U.S. 257, 260 (1971).

It is not possible to establish absolute standards on a statewide basis that would dictate the only acceptable plea agreement under a given set of circumstances. Indeed, even within the same office, there are few plea negotiations principles for which there can be no exceptions. The Prosecutor must make certain that each case is determined individually according to its own unique facts and circumstances. The ultimate factor must

always be the exercise of good judgment by the negotiating Prosecutor.

When plea negotiation has been initiated, all files pertaining to the subject defendant should be gathered and considered for possible disposition. If the defendant advises the negotiating Prosecutor of new charges which have not yet reached the Prosecutor's Office or if the criminal history record information indicates any pending charges, the Prosecutor should contact the local police department or municipal court and request that said charges be forwarded immediately so that they may be included in the plea agreement.[1] This will enable the Prosecutor to make a plea offer based on a more accurate assessment of the defendant's criminal proclivity, provide an opportunity to clear the docket of several indictments or potential indictments, and give the sentencing judge a clear picture of the defendant's background. It will also obviate the necessity of repeating the procedure when other charges ripen.[2]

Before plea negotiations have resulted in a final agreement, consideration must be given to its effect on co-defendants. It should be the goal of the Prosecutor conducting negotiations to

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[1]If the record information indicates the pendency of a charge in another county, the Prosecutor should contact the foreign Prosecutor to see if a negotiated plea can be arranged pursuant to R. 3:25A-1.

[2]As part of the Speedy Trial Pilot Program, certain counties have instituted the Central Judicial Processing Program. This establishes a central arraignment procedure for the entire county. The benefit of this program is that all complaints with accompanying police reports are forwarded to the Prosecutor's Office within two weeks of arrest. Case screening can then immediately review all complaints and police reports and the Prosecutor's Office can be quickly alerted to all open charges pending against a particular defendant in the county.

strengthen, or at least not weaken, his case against co-defendants. Where appropriate, he may wish to exact some form of cooperation from the defendant as a condition of the plea agreement. In some cases the Prosecutor may wish to elicit certain information from the defendant, on the record, thereby protecting the State's position against co-defendants in subsequent trials. Conversely, a defendant who has decided to plead guilty may wish to take complete responsibility for the criminal act, and thereby exculpate co-defendants. The Prosecutor would then be in a position to dismiss charges against co-defendants if the facts of the case justify such a disposition.

In offering a plea agreement on a package involving co-defendants, the Prosecutor should consider conditioning the plea agreement upon the acceptance of plea offers to all co-defendants. This will avoid a situation where the Prosecutor has pled some defendants but must still try the remaining co-defendants. For strategy reasons, it is sometimes more advantageous to have all co-defendants tried at the same time rather than to have to explain, or be unable to explain, to the jury why certain co-defendants are not present for the trial. By disposing of all co-defendants on a package at one time, the Prosecutor can insure more uniform results and eliminate potentially disparaging sentences on co-defendants.

No plea agreement should be consummated unless the negotiating Prosecutor has had an opportunity to review the defendant's complete record of prior criminal involvement. In many cases, since criminal records are often incomplete, a

detective should be assigned to determine the final disposition of charges.[3] It should be obvious that a defendant's prior criminal activity is a very significant factor to be considered before entering a plea bargain on current charges.

It is often advisable to contact the police officers who investigated the crime which is the subject of negotiations in order to obtain further information concerning the defendant. A Prosecutor's decision to enter a plea agreement is a discretionary act which cannot be forced on him by court or counsel. He is not limited to considering only prior convictions in determining whether or not to exercise his discretionary authority. Information obtained from local authorities that a defendant has engaged in criminal activity which has not resulted in a conviction may be a significant factor to consider.

When there is a specialized unit within an office with jurisdiction over crimes of the type being considered for a plea negotiation, e.g., homicide, narcotics, gambling, etc., the appropriate member of such unit should be consulted. In this manner, the negotiating Prosecutor may be able to obtain relevant information concerning the defendant, which may not appear in the file. He may also wish to consider the effect of the plea on the overall operation of the specialized unit.

Before consummating a plea agreement, the Prosecutor should make every effort to comply with the spirit[4] of the Victim-Witness Assistance Act as enumerated in N.J.S.A. 52:4B-44a and b

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[3]See also the discussion concerning simultaneous disposition of open charges, supra.

[4]The Prosecutor should also be aware of N.J.S.A. 52:4B-36.

and the guidelines promulgated by the Division of Criminal Justice in its "Attorney General Standards to Ensure the Rights of Crime Victims" dated April 21, 1988. Whenever possible, victims shall be provided the opportunity to consult with the Prosecutor prior to the dismissal of the case or the finalization of a plea agreement with the defense. ("Attorney General Standards," Part Two,II(F),p.19). The Prosecutor should be particularly sensitive to comments of victims of violent crimes by giving them an opportunity to speak with the Prosecutor. While the Prosecutor should remain attuned to the victim's thoughts and concerns, nothing contained in the Victim-Witness Assistance Act or the Attorney General Standards should be construed to alter or limit the authority or discretion of the Prosecutor to enter into any plea agreement which the Prosecutor deems appropriate. (Ibid.) Similarly, while an arresting police officer should in certain cases be consulted, the Prosecutor should not yield his authority to enter a plea agreement. Restitution should be requested and ordered in every case in which a victim has suffered a monetary loss. ("Attorney General Standards," Part Two, II(E) & (G)). The Prosecutor, however, should not give up an appropriate and beneficial plea agreement should restitution become an insurmountable obstacle to the acceptance of such a plea agreement.

Generally accepted types of agreements may be divided into three categories.

1. Recommendations that separate indictments or counts of the same indictment or other complaints or indictments be

dismissed in return for specified guilty pleas. See R. 3:9-3; R. 3:25-1.

2. Recommendations for specified maximum exposure less than the statutory maximum (or a concurrent sentence). See R. 3:9-3. Recommendations for minimum mandatory parole time may also be part of the agreement.

3. Recommendations that the crimes charges be downgraded to less included offenses, either indictable or disorderly. Prior to indictment the Prosecutor can administratively dismiss or downgrade offenses and remand to the municipal court. After indictment a court is required, and the indictable offense can be dismissed upon plea to the downgraded offense. R. 3:25-1.

It is "essential that the terms of the agreement be clear and unequivocal and fully understood by defendant." State v. Brown, 71 N.J. 578, 582 (1976). An agreement may contain concessions by the defendant waiving his right to appeal. See State v. Gibson, 68 N.J. 499 (1975), as to the effect thereof.[5] See also R. 3:9-3(d). But see State v. Sainz, 107 N.J. 283, 294 (1987) (expressing the Court's belief that waiver will rarely be needed given the presumption of reasonableness that attaches to criminal sentences in plea bargains).

The Prosecutor in each county should develop, reduce to writing, and distribute to every member of his staff, his plea negotiation policies which should be broad enough to apply to all

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[5]Pursuant to R. 3:9-3(d), defendant does not actually lose the right to appeal. Defendant still has the right to take a timely appeal but the State is then in a position to seek to have the plea agreement annulled should defendant take such an appeal.

cases. This will tend to encourage a consistency of approach in similar situations and to minimize the effects of forceful judges, persuasive counsel and negotiating Prosecutors with widely divergent plea negotiation philosophies.

Either the Prosecutor or his First Assistant, or a designated assistant must always be available to discuss and interpret office policy as it applies to a specific set of facts. In order to encourage uniformity and to discourage disparity, the Prosecutor or designee (such as the First Assistant or the Chief of the Trial Section) should approve all negotiated plea agreements. This assistant must have a thorough knowledge and understanding of office policy and the requisite authority to accept or initiate offers which constitute exceptions to established policy.

Internal office plea negotiation procedures should concentrate on three essential elements:

1. Preparation of agreements at the earliest possible stage of the proceedings;
2. Documentation of each plea negotiation sought to be entered by means of a written memorandum which would become a permanent part of the file;
3. A multiple review of each plea negotiation prior to consummation. It is imperative to clearly define who in the office has the requisite authority for approving, rejecting or modifying a plea agreement.

Turning now to the subject of sentencing, it is axiomatic that the role of the Prosecutor does not terminate upon the return of a guilty verdict or the disposition of criminal charges by

virtue of a plea agreement. The Prosecutor must recognize that he has an affirmative function with respect to the sentencing process.[6] He may take any appropriate position at sentencing with respect to each case involving either a plea or trial, provided that if a negotiated plea was involved, the terms of that plea must be strictly adhered to. This is not to say that a Prosecutor is duty bound to take a position to sentencing in each case. However, his decision to make a recommendation with regard to a sentence should be based upon reasoned judgment.[7] Plainly, the guidelines set forth above with respect to plea bargaining are equally applicable to sentencing recommendations.

In negotiating a plea agreement, the Prosecutor must make sure that the bargained for sentence will comply with all Code and

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[6]Of course if part of a plea negotiation is that the Prosecutor will make no recommendation as to sentence, this must be strictly adhered to. State v. Brown, supra. If a specific recommendation as to sentencing was promised to the defendant, the Prosecutor must "meticulously" carry it out. See State v. Jones, 66 N.J. 524 (1975) for a situation where the Prosecutor failed to recommend concurrent sentences pursuant to the terms of a plea negotiation. However, where the plea is not entered pursuant to negotiations, the Prosecutor may make any appropriate recommendation upon the entry of a guilty plea. Moreover, the Prosecutor may be heard at sentencing following convictions after trial.

[7]As part of a negotiated plea, the Prosecutor may recommend incarceration or a maximum exposure or a specific term of years. However, if a judge does not impose the specific term of years, as recommended by the Prosecutor, it is not clear that the plea can be withdrawn. Cf. State v. Spinks, 66 N.J. 568 (1975) (State does not have the right to withdraw from plea agreement modified on appeal). But see State v. Roddy, 210 N.J. Super. 62 (App. Div. 1986) (merger of two counts of indictment defeated State's reasonable expectations under plea agreement. Therefore the parties returned to status quo ante). In connection with sentence recommendations independent of a negotiated plea, the Prosecutor can - and in appropriate circumstances should - recommend imposition of a custodial term, the place of incarceration, a specific term, a consecutive sentence or any other appropriate action.

sentencing guidelines and provisions.[8] The court will reject any plea agreement calling for an illegal sentence. State v. Nemeth, 214 N.J. Super. 324, 327 (App. Div. 1986) certif. den. 105 N.J. 525 (1986). Accord, State v. O'Connor, 105 N.J. 398, 404 n.2 (1987). R. 3:21-4 requires that the sentencing court at the time of sentencing shall state his reasons for sentencing, and numerous appellate level opinions have consistently held that the sentencing court must state its reasons with sufficient clarity to enable appellate review of the sentence imposed. State v. Sainz, 107 N.J. 283 (1987); State v. Kruse, 105 N.J. 411 (1987); State v. Yarbough, 100 N.J. 627 (1985), cert. den. ___ U.S. ___, 106 S.Ct. 1193 (1986); State v. Roth, 95 N.J. 334 (1984); State v. Hodge, 95 N.J. 369 (1984). At the sentencing hearing, if the court fails to set forth an explicit statement of reasons, the Prosecutor should urge the court to do so in order to avoid a remand and resentencing which could be ordered by an appellate court.[9]

Finally, pursuant to N.J.S.A. 2C:44-1f(2), the State has the right within ten days to appeal a sentence imposed on a first or second degree crime which has been reduced one degree or where the

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[8]The need to establish a sufficient factual basis for a guilty plea is not obviated by the fact that the plea is part of a negotiated plea agreement. State v. Sainz, 107 N.J. 283, 293 (1987). Hence, a sentencing court is not limited to the factual basis given or acknowledged by defendant. Id. at 292. R. 3:9-2 permits a court to make inquiry of defendant and others. Thus the Prosecutor should be prepared to supply additional facts in order to enable the court to take a complete factual statement upon which to base an appropriate sentence.

[9]The Prosecutor could submit a sentencing letter to the court in advance of the sentencing date in those cases which would require a complicated weighing of aggravating and mitigating factors to insure that all of the Code's sentencing guidelines are complied with.

court imposes a noncustodial or probationary sentence on a first or second degree crime. It must be cautioned that the State will not be allowed to file such an appeal if the State has recommended the downgrade or lesser sentence or waived its right to take a position at sentencing - i.e., waived its right to speak at sentencing, or waived its right to appeal. State v. Partusch, 214 N.J. Super. 473, 476 (App. Div. 1987); State v. Ferrara, 197 N.J. Super. 1, 2 (App. Div. 1984); State v. Paterna, 1985 N.J. Super. 124 (App. Div. 1984).

APPEALS AND BAIL AND SURRENDER STANDARDS

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Division of Criminal Justice

1. It is the duty of a prosecutor after the verdict and before imposition of sentence to determine if a defendant should be released on bail pending sentencing based on such factors as defendant's prior record, the nature of the crime, and the likelihood defendant will jump bail.

2. It is the duty of a prosecutor after the imposition of sentence to insure that a defendant's sentence is executed. The filing of an appeal does not stay execution of sentence to imprisonment or probation unless and until bail or stay pending appeal is granted.

3. A prosecutor must respond to motions for bail pending appeal or stay of sentence immediately since the court processes such applications on an expedited basis. A prosecutor must also answer other appellate motions if the case is unperfected, after consultation with the Division of Criminal Justice, Appellate Section, which will not have adequate knowledge of the facts at the stage.

4. In formulating a response to a defendant's motion for bail pending appeal, a prosecutor must determine if defendant is an appropriate candidate for bail or stay. Such a determination is based upon whether or not defendant satisfactorily establishes the criteria for release in the court rules that the appeal presents a substantial question and that defendant's admission to bail will not seriously threaten the safety of any person, including defendant, or of the community. In order for an appellate issue to be substantial, there must be some likelihood that it will result in reversal of the conviction or reduction of the sentence. In determining whether or not a defendant poses a threat to safety, the prosecutor must consider such factors as defendant's prior record, the nature of the offense, the likelihood defendant will jump bail or violate the conditions of bail, defendant's medical and mental condition including any addictions, and any factors indicating violent disposition.

5. If a prosecutor determines that a defendant is an appropriate candidate for bail pending appeal, the prosecutor must be prepared to recommend prudent terms and conditions of bail to the court, including possible restrictions on travel and waiver of extradition and posting of a bond for payment of a fine or costs.

6. If a prosecutor determines that bail is not appropriate, the prosecutor must rebut defendant's contentions that the appeal raises substantial questions or that defendant does not pose a threat to safety.

7. A prosecutor must insist that defendant's notice of appeal or notice of petition for certification be filed contemporaneously with the motion for bail pending appeal or stay of sentence.

8. While the court rules require appellant to serve the notice of appeal on the Division of Criminal Justice, Appellate Section, as well as the prosecutor, the prosecutor should notify the Division of Criminal Justice, Appellate Section if it appears that appellant has not complied with the notice rules. If the prosecutor's office desires to participate in the appeal, a prosecutor should notify the Division of Criminal Justice, Appellate Section, as soon as possible, supplying information concerning the prospective issues in the matter.

9. A prosecutor must notify the Division of Criminal Justice, Appellate Section, if bail pending appeal is granted, if any change occurs in bail or custodial status, if the sentencing court entertains a motion for change or reduction of sentence, or if any other motion or petition is filed with the trial court or received during the pendency of the appeal.

10. A prosecutor must immediately notify the Appellate Section of the Division of Criminal Justice if a defendant jumps bail or becomes a fugitive to permit filing of a dismissal motion.

11. After an affirmance by the Appellate Court of defendant's conviction a prosecutor must immediately issue a surrender notice or move for the issuance of a bench warrant in the event the defendant fails to surrender. A prosecutor should not abandon these efforts unless and until an order allowing bail pending appeal has been entered by an appropriate court.

12. If the Appellate Court reverses, modifies or remands a case for further proceedings, a prosecutor must promptly consult with an determine if the Division of Criminal Justice, Appellate Section, is contemplating further appeal. If it is determined that further appeal by the State is unwarranted, a prosecutor must promptly comply with the terms of the appellate decision and, where appropriate, obtain conforming orders from the trial court.

13. When appropriate, a prosecutor should notify the Sheriff's Office or Probation Department of appellate dispositions to insure that sentences are properly executed.

14. If an appeal of the sentence by the State is contemplated, the notice of appeal must be filed by a prosecutor within ten days after the judgment is filed to stay execution of

sentence and avoid double jeopardy concerns. Notices of cross-appeal must be promptly filed within the limits provided by the court rules, and the Division of Criminal Justice, Appellate Section, must be notified of the nature of such cross-appeals and whether the prosecutor intends to participate in the cross-appeal.

COMMENTARY

Bail Subsequent to Verdict or Plea and Prior to Sentencing

A prosecutor's responsibility regarding post-verdict bail commences the moment that a jury returns a verdict of guilty. Pursuant to R. 3:21-4(a) the trial judge has three options at that juncture. He may (1) commit the defendant to jail, (2) continue the bail in the amount set before trial or (3) alter the amount and terms of bail. Consequently, a prosecutor should be prepared to take a position at that time respecting bail pending sentence. Obviously, a wide variety of factors must be considered on a case-by-case basis consistent with the policy of each office.

In cases involving crimes of violence, recidivists or any person who is unlikely to be present for sentence, the trial judge should be urged to commit the defendant pending sentence. It should be emphasized that following conviction, defendant is no longer clothed with the presumption of innocence and that an individual facing a term of incarceration has a greater incentive to flee. In support of the application defendant's current criminal history record (rap sheet) should be presented. Also, to the extent possible, the court should be informed regarding defendant's background, residence, employment and family status. If the application for commitment is denied by the court, then the prosecutor should request that the bail be increased in amount.

Also, where applicable, restrictions upon the defendant's freedom to travel outside the state out to be imposed, or defendant should be required to waive extradition.

A different situation is presented, however, by a defendant who will be the beneficiary of a non-custodial sentence recommendation. In that case, it is appropriate to indicate non-objection to the continuance of bail pending sentence.

Bail Pending Appeal and Subsequent to Sentence (R. 2:9-3 and R.2:9-4)

Initially, it is emphasized that a custodial or probationary sentence is not stayed by the taking of an appeal or by the filing of a Notice of Petition for Certification.[1] The only manner by which a defendant may obtain a stay of a custodial sentence is to apply for admission to bail pending appeal. See R. 2:9-4. Thus, it is the duty of the prosecutor after the imposition of sentence to insure that a defendant is incarcerated unless and until bail pending appeal is granted.

The starting point for a defendant seeking bail pending appeal to the Appellate Division is the trial level. At this juncture, it is important to emphasize that the party seeking bail pending appeal shall present the sentencing judge with a copy of the notice of appeal with a certification thereon that the original has been filed with the Appellate Court.[2] If bail is denied by the trial court, defendant may then apply by motion to the Appellate Division and if bail is denied by that tribunal, he may apply by motion to the Supreme Court.

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[1]See R. 2:9-3(b).
[2]See R. 2:5-1(a).

In each case it must be emphasized that the defendant bears the burden of demonstrating his eligibility for post-trial bail. All too frequently, defendants are wrongly admitted to bail pending appeal due to the court's refusal or failure to consider the stringent standards. R. 2:9-4. It is the responsibility of the prosecutor to oppose such actions. Also, on many occasions prosecutors have not vigorously opposed bail pending appeal due either to the distraction caused by a successful guilty verdict or because of their cordial relationships with defense counsel. Such situations should not occur since, after a finding of guilt, a defendant's cloak of innocence has been removed. More importantly, society's expectations with respect to swift execution of the sentence imposed should not be thwarted absent a fulfillment of the requirements of R. 2:9-4. Moreover it is widely recognized that the rehabilitative process is enhanced by immediate execution of sentence. Lastly, we must discourage the taking of frivolous appeals by those defendants who utilize the appellate process merely as a mean of deferring the inevitable to remain at liberty.

R. 2:9-4 provides that the defendant establish both that the question on appeal is substantial and that his admission to bail will not seriously threaten the safety of any person or of the community.[3] With respect to the first criterion it is strenuously recommended that the assistant prosecutor who tried the case or accepted the plea handle the bail motion, since that

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[3]Cf. In re Manna, 124 N.J. Super. 428, 434 (App. Div. 1973), certif. den. 64 N.J. 158 (1973).

attorney is familiar with the record and is obviously in the best position to persuade the court that the questions on appeal are insubstantial. As for the second criterion, the prosecutor must be prepared to demonstrate that the defendant, if admitted to bail, will pose a serious threat to the safety of a specific person or to the community at large. The nature of the crime committed and the defendant's criminal record history will be the most persuasive evidence on this issue. Bail is not available where a sentence of death has actually been imposed.

At the trial level bail motions require the attendance of the prosecutor. At the appellate level, both in the Appellate Division and Supreme Court, bail motions are usually decided on the moving papers and the pleadings filed in opposition to the application for bail. Response to a motion can be made by letter. It is not uncommon, however, for defense counsel to circumvent the usual motion practice and to seek emergent relief in the appellate courts after being denied bail at the trial level. The prosecutor should insist that he be promptly notified of such applications so that the views of the State are adequately presented. Unfortunately, ex parte applications are often made and granted, and the prosecutor must discourage this practice.

Although the rule permits a party responding to a motion ten days within which to file papers (R. 2:8-1), it is the practice of the Clerk of the Appellate Division to expedite bail motions and forward them to the court immediately upon receipt. Therefore, bail motions must be answered within several days of receipt. It is important for the assistant prosecutor to notify the

appropriate staff attorney with the Appellate Division clerk's office that a response from the State is forthcoming. Otherwise, the court may dispose of the motion without input from the State. Often, the Appellate Division Clerk will request that the State mail a copy of the opposition letter to the judges of the panel of the Appellate Division at their chambers and to forward two copies to the clerk's office.

At the trial level bail motions are handled by the assistant prosecutor. At the appellate level bail motions are handled by the assistant prosecutor or a deputy attorney general for the Appellate Section of the Division of Criminal Justice. Specifically, if defendant's appellate brief and transcripts have not been served upon the Division of Criminal Justice, the bail motion and other motions requiring knowledge of the facts are commonly referred to and must be handled by the assistant prosecutor because he/she is in the best position to rebut defendant's motion by demonstrating that the questions on appeal are insubstantial and that defendant's admission to bail will seriously threaten the safety of a person or the community at large. Obviously, prior to receipt of the brief the Division of Criminal Justice, Appellate Section will have no knowledge of the facts surrounding the conviction or the personal history of the defendant. Once a defendant's brief has been filed with the Division of Criminal Justice a deputy attorney general will usually handle such motions. Thus, upon receipt of such motions the prosecutor should immediately contact the Appellate Section

and ascertain which office has responsibility for answering the motion.

Bail Pending Review by the Supreme Court

After disposition by the Appellate Division and pending proceedings in the Supreme Court, the trial court does not have jurisdiction to grant bail. Bail may be allowed by the Appellate Division or if denied by it, by the Supreme Court. Of course, the prosecutor shall have automatically initiated surrender procedures which should not be abandoned until a new bail order has been signed. See Surrender, infra. If the Division of Criminal Justice has handled the conduct of the appeal, a deputy attorney general will ordinarily handle such bail motions, while the prosecutor will remain responsible for securing defendant's surrender. A trial court has no jurisdiction to grant bail pending petition for certiorari to the United States Supreme Court. State v. Kaufman, 175 N.J. Super. 549 (Law Div. 1980).

Stay of Fine or Probation

Stays of probation and fines are not automatic. After conviction a defendant must make application to the trial judge, who may grant a stay on appropriate terms provided that an appeal has been taken or a notice of petition for certification has been filed.[4]

Although R. 2:5-1, which requires that the party seeking bail present to the sentencing judge a copy of the notice of appeal, does not by its terms apply to an application for a stay of probationary term pending appeal, the same practice should be

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[4]R. 2:9-3(c) & (d).

followed to the extent that the court must be assured by adequate documentation that an appeal has been filed before a stay pending appeal is granted.

Similarly, the standard for bail pending appeal in R. 2:9-4 (defendant must establish both that the question on appeal is substantial and that his admission to bail will not seriously threaten the safety of any person or the community) does not by its terms apply to an application for a stay of probationary term pending appeal. It would appear, however, that the same standard should be used on an application for a stay pending appeal. Defendants should bear this burden, particularly because probationary terms are frequently imposed with significant conditions made a part thereof. These probationary terms and conditions are often designed to have an immediate impact (such as through drug or alcohol treatment) in the absence of which a custodial term might have been imposed or might be more appropriate. In the absence of immediate imposition of such conditions the safety of the community would have to be considered.[5]

With respect to fines, R. 2:9-3(c) provides that they may be stayed pending appeal. The rule further provides that the trial court may require a defendant to deposit the fine and costs with the appropriate county official, or may require him to post bond for payment of the fine and costs, or require a defendant to submit to an examination of assets, or issue an order restraining defendant from dissipating his assets. In those cases where the

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[5]Cf. R. 2:9-4.

fine and costs are substantial and there exists serious doubt that the defendant will satisfy the fine and costs after appeal, such a course of action may be prudent.

Monitoring of Bail Cases by Division of Criminal Justice -- Appellate Section

The Appellate Section of the Division of Criminal Justice opens an appellate file upon receipt of the notice of appeal and docket notice from the defendant or the county prosecutor. The transmittal papers must include information concerning defendant's bail status. Also, the transmittal papers must include the following information if not otherwise indicated:

a. The crime with which defendant was charged or of which he was convicted;

b. the sentence, if any;

c. whether defendant is incarcerated;

d. if defendant is not incarcerated, the conditions, if any, controlling his liberty, and

e. the amount of bail fixed and the nature of the bail posted.

Such information is now required to be included in every application to the Appellate Division in criminal matters by motion, emergent application or otherwise, seeking a departure from the time periods set by the rules of court, pursuant to a Notice to the Bar promulgated by the Administrative Office of the Courts. It is also required in the Case Information Statement (CIS). It will facilitate motions by the State for dismissal or summary affirmance.

In those cases where defendant is on bail pending appeal, the case is listed in a bail diary and is monitored by a deputy attorney general to insure that defendant files his brief within the time allowed by the rules of the court. If defendant fails to do so, the court is contacted and requested to take action or a motion to dismiss the appeal, or, in the alternative to revoke bail, is filed by a deputy attorney general. If the motion is denied, the case is listed in the bail diary and monitored repeatedly. If the motion is granted dismissing the appeal or revoking the bail, a copy of that order is sent to the County Prosecutor on the day it is received by the Appellate Section. It is imperative that upon receipt of such an order immediate steps are taken to incarcerate the defendant. A failure to do so, often done as an accommodation to defense counsel, is contrary to the order of the court and does not serve the interests of criminal justice.

Revocation of Bail Pending Appeal

By rule a judge or court allowing bail may at any time revoke the order admitting to bail.[6] Thus, upon learning that a defendant has violated the terms or conditions of bail, it may be deemed appropriate to move for revocation of bail. A motion for revocation of bail is appropriate where a defendant, free on bail pending appeal, is indicted for another criminal offense. The procedures to be utilized in such a situation are clearly set forth in State v. Maccioli, 110 N.J. Super. 352 (Law Div. 1970).

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[6] R. 2:9-4.

Motion to Dismiss Fugitive's Appeal

If defendant becomes a fugitive or jumps bail pending appeal, a prosecutor should immediately notify the Appellate Section, Division of Criminal Justice, and forward evidence of fugitive status such as a bench warrant. A deputy attorney general will move for dismissal of the appeal. See State v. Rogers, 90 N.J. 187 (1982). Upon a defendant's abandonment of the appeal, the appellate counsel has no authority or standing to continue the appeal. See, e.g., Poch v. Haag, 105 N.J. Super. 44 (App. Div. 1969).

Surrender Procedures

It is imperative that upon receipt of a copy of an Appellate Division or Supreme Court disposition affirming defendant's conviction or receipt of an order of the Supreme Court denying defendant's petition for certification that a prosecutor take immediate steps to determine defendant's bail status. If the defendant is on bail pending appeal or if any stay of sentence has been entered, then such bail or stay should be vacated immediately and sentence executed. Specifically, a prosecutor should send out a surrender notice to the defendant or his counsel and move for the issuance of a bench warrant in the event the defendant does not surrender. A prosecutor should never enter into informal agreements with defense counsel regarding surrender. Such practices do not fulfill society's expectations that the sentence imposed will be executed swiftly after completion of appellate review. Also, a delay in execution of sentence does not enhance the rehabilitative process. Moreover, given the problem of

recidivism, there is the danger that the defendant will commit another crime during the hiatus between the completion of the appellate process and his surrender.

Post-Appellate Division Disposition

Upon receipt of the copy of the Appellate Division disposition a prosecutor should send out the surrender notice. A prosecutor should not abandon pursuit of surrender unless and until an order allowing bail is signed. R. 2:5-1(a) does not by its terms provide that a party seeking bail pending certification must present to the sentencing judge a copy of the notice of petition for certification with a certification thereon that the original has been filed with the Appellate Court. Nevertheless, the prosecutor should be certain that a notice of petition for certification has actually been filed before bail pending review by the Supreme Court is granted. Also, after Appellate Division affirmance, it would appear that a further stay must be obtained from the Appellate Division.

Pursuant to court directive the Trial Court Administrator in each county is required to notify the interested persons (e.g., the Chief Probation Officer) of the Appellate Division disposition if execution of sentence, probation or fine has been stayed. Nevertheless, it is recommended in such cases that a prosecutor also notify the interested persons of the Appellate Division disposition.

Post-Supreme Court Disposition

Upon receipt of the copy of the Supreme Court's order denying certification a prosecutor should send out the surrender notice.

Absent a court order a prosecutor should not abandon the surrender process.

Appeals by the State

In appeals taken by the State pursuant to N.J.S.A. 2C:44-1f(2) the execution of sentence is automatically stayed pending appeal. R. 2:9-3(d).

"Whether the sentence is custodial or non-custodial, bail pursuant to R. 2:9-4 shall be established as appropriate under the circumstances. A defendant may elect to execute a sentence stayed by the State's appeal but such election shall constitute a waiver of his right to challenge any sentence increase on grounds that execution has commenced." R. 2:9-3(d).

INTENSIVE SUPERVISION PROGRAM

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Appellate Section
Division of Criminal Justice

In response to the prison overcrowding crisis, the legislature provided funding for an intensive supervision program to be operated by the Administrative Office of the Courts on an experimental basis. This program was designed to test whether an intermediate form of punishment, one which would be less costly than prison, but much more burdensome than traditional probation, will achieve criminal justice objectives of deterrence and rehabilitation. This experiment was innovative since it had never before been tried in New Jersey. Five years later, it appears that ISP is here to stay.

On April 26, 1983, the New Jersey Supreme Court reviewed and approved ISP. Thereafter, the Chief Justice issued an Order that relaxed R.3:21-10(b) (1) to permit entry into the program, established a three-judge Resentencing Panel, and approved commencement of the program itself. The Resentencing Panel has since been expanded to six judges. The judges sit in a panel of three at various courthouse locations throughout the state.

The program established for the first time in New Jersey an intermediate form of punishment between incarceration and probation. In theory, the program provides a structure within which certain offenders sentenced to state correctional facilities are given an opportunity to work their way back into the community

under intensive supervision. The inmate must prepare a realistic plan which provides assurance to a Screening Board and a Resentencing Panel of judges that his/her return into the community will result in a positive social adjustment and will not jeopardize the public's safety.

According to the Administrative Office of the Courts, ISP application forms are provided to defendants at the time of sentencing and are available at county jails and state correctional facilities. The form can be completed immediately. However, eligibility and conditional release under ISP can occur only after a defendant serves at least 60 days in the state facility. Typically, a defendant will have experienced approximately four months confinement.

Not all inmates are eligible for ISP. Inmates serving state prison sentences for violent crimes such as homicide, robbery, aggravated assault, and sex offenses are ineligible for participation in the program. ISP coordinators take the position that exclusion for sex offenses and homicide includes all sex offenses regardless of the degree. Additionally, inmates serving sentences for non-violent crimes who have a history of violent or assaultive conduct are generally excluded from ISP. The program is geared for inmates serving time for non-violent crimes who have no history of violent or assaultive behavior and who represent a reasonable probability of successful rehabilitation in the community. Furthermore, any inmate whose current conviction includes, as a part of a state prison sentence, a mandatory sentence or parole ineligibility term may not participate in ISP.

Once an application is received, the applicant's presentence investigation report and judgment of conviction are reviewed to determine eligibility. If an applicant is not automatically excluded by reason of the nature of his conviction or imposition of a period of parole ineligibility, the ISP staff will review the presentence investigation report for a history of violence or violence in the present offense, prior criminal record or involvement in on-going criminal activity. Applicants not rejected for these reasons are then interviewed by the program staff.

Each applicant for ISP must develop an individual plan for life in the community upon release (addressing such areas as full-time employment, study, community service, living arrangements, family relationships, income/expenditures, education/career training, leisure time and pending legal problems). Inmates must establish a series of short-term realistic and progressive goals for themselves. This plan must identify a community sponsor, who will be responsible for the defendant and his behavior while he is on release, and a "network team," consisting of others in the community, who will guide and assist the defendant in meeting his goals. The network team must make certain the defendant understands his social and legal problems. If the defendant does not make the necessary effort to achieve his self-imposed goals, he will be immediately returned to prison.

During the applicant investigation process, the ISP officer seeks recommendations from the original sentencing judge, the prosecutor, previous probation and parole officers, victims and local police. It is important for prosecutors to take advantage

of this initial opportunity for providing input. It may be easier to persuade the ISP officer to recommend that the applicant is unsuitable for ISP than to later persuade the ISP Resentencing Panel not to release a defendant.

The ISP officer then prepares an assessment report which is presented to the ISP Screening Board for its review. The Screening Board can accept the officer's recommendation, reject it, or reinterview the applicant.

The ISP Resentencing Board reviews the suitability of applicants convicted of first or second degree crimes or a crime of violence and also reviews the suitability of applications rejected by ISP staff. The Board also interviews applicants to determine whether an applicant will be recommended to the ISP Resentencing Panel for admission to ISP.

A Resentencing Panel, consisting of three of the six Superior Court judges appointed to the Panel by the Chief Justice, reviews the ISP application and case plan of those inmates receiving favorable recommendations from the Screening Board. The Panel will decide whether an applicant will be admitted, rejected, or postponed so that the applicant will spend more time in jail. If the panel determines after a hearing that the defendant is a desirable candidate for ISP, it grants the application for resentencing. The defendant is immediately released to the custody of the community sponsor. The defendant, who must reside in New Jersey, is assigned an ISP officer who is responsible for the daily supervision of the defendant. The Resentencing Panel reviews the progress of each program participant every

90 days. Participants are initially released for a 90 day trial period. At the conclusion of 180 days, participants appear before the Panel for formal resentencing pursuant to R.3:21-10(b) to the original term of incarceration less the time served. Sentence then will be suspended in accordance with N.J.S.A. 2C:45-1, subject to the defendant's continuing compliance with his plan and ISP conditions. The maximum period of suspension will be the maximum term which was initially imposed or five years, whichever is less, minus credit for time served. All ISP participants must successfully complete a minimum of 16 months of intensive supervision to regular probation supervision or be discharged entirely at the discretion of the Resentencing Panel. The Resentencing Panel also conducts hearings on participants charged with program violations. All decisions are unanimous by the Resentencing Panel.

The ISP program provides for solicitation of responses from such sources as the sentencing judge, prosecutor's office, probation, local police chief, victim/complainant and investigating ISP officer as to the suitability of the inmates for participation in ISP. The prosecutor's office has two opportunities to provide input. Initially, as noted earlier, it may respond after a defendant submits an ISP application. The prosecutor's office can again respond prior to an ISP Resentencing Panel hearing. At this second opportunity, the prosecutor will review the exact materials

that will be relied upon by the Resentencing Panel, including institutional records of the inmate.

The Intensive Supervision Program is no longer an experimental program. Indeed, despite vigorous opposition by law enforcement, efforts are underway to expand ISP eligibility to individuals serving mandatory minimum sentences. Prosecutors should continue to cooperate with ISP by responding to requests for information and the State's position on a defendant's application. Prosecutors also must attend the hearings before the Resentencing Panel and argue forcefully their positions. There is little to be accomplished by any prosecutor systematically seeking to exclude all applicants for the program, regardless of their case plan or background. Each applicant to the program is entitled to a fair evaluation by the prosecutorial arm of the State. Prosecutors may argue for denial of entry into the program or for a delay of entry based upon the need to satisfy the punitive aspect of the sentence by requiring the defendant to serve additional time in custody before acceptance into the program.

ISP envisions strict supervision of inmates released into the program. As a result, each ISP staff member must achieve a minimum of five contacts per week with each participant he or she supervises. Three contacts must be personal visits with the ISP officer. Each inmate in ISP must perform at least 16 hours of community service per month. Curfew or house arrest is imposed on most participants from 8:00 p.m. to 6:00 a.m. if unemployed. After employment is obtained, the curfew is usually changed to 10:00 p.m. to 6:00 a.m. Each applicant accepted into ISP must

maintain a daily diary of activities and accomplishments. Another condition of ISP is the mandatory participation by the inmate in weekend-evening group counseling/activities scheduled by the ISP officer. Where the ISP officer has identified a specific treatment or therapy program, such as Alcoholics Anonymous or drug counseling that will benefit the inmate, that inmate must attend scheduled sessions/appointments or be returned to prison. ISP participants also undergo random urine monitoring to detect drug use.

Since the inception of ISP in 1983 until April, 1988, there have been 7,310 applications received for admission into the program. From the applications, 1,216 participants were released into ISP. Of those admitted into the program, 389 (32%) are still actively under supervision, 445 (36.6%) successfully graduated from the program, 370 (30.4%) were returned to custody, and 13 (1.1%) have either died while under supervision, or had their prison sentences overturned.

A long range goal of ISP is to remove from the state prison system up to 500 inmates at one time. Since its inception the largest number of participants in the program at any one time has been 410. Normally ISP carries between 390-395 participants.

ISP is now being considered for implementation at the county level. Essex County implemented ISP in November, 1985 under the name ECLIPSE. It operates in essentially the same manner as the state program. An inmate must agree to participate in the program for at least six months as opposed to the 16 month requirement at the state level. ECLIPSE participants are subjected to curfews,

urine monitoring, group counselling, referrals for individual counselling, community service, full-time employment, etc. Applicants may apply for admission after serving at least ten days in custody. The ECLIPSE program can supervise no more than 30 cases at any one time.

The Chief Justice's Order referred to earlier provided that motions made pursuant to R.3:21-10(b) (1) were addressed entirely to the sound discretion of the three-judge panel. The Order then provided, "There shall be no administrative or judicial review at the several levels of eligibility established under the program, nor any appellate review of the panel's substantive decision." If a defendant does appeal from an adverse decision on eligibility, the prosecutor's office should immediately notify the Division of Criminal Justice, Appellate Section. Moreover, the nonappealability of adverse decisions will trigger federal habeas corpus applications by inmates. For example, one inmate, who was rejected because he indicated plans to reside in New York, challenged the residency requirement as a denial of due process and equal protection of the laws. The United States District Court rejected the inmate's contentions and denied the petition for writ of habeas corpus. Ignacio Licea v. Edward O'Lone, Civil No. 83-3645 (D.N.J., filed February 29, 1984).

DISCIPLINARY MATTERS INVOLVING ATTORNEYS

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Lawyers, as guardians of the law, play a vital role in the preservation of society. The consequent obligation of lawyers is to maintain the highest standard of ethical conduct. Whenever a lawyer fails to uphold the required high standards and abuses the attorney-client privilege by stealing from the client, he must be severely dealt with. A County Prosecutor's Office cannot afford to overlook attorneys' defalcations and must pursue any attorney, who is suspected of violation of the criminal law, to the fullest extent of the law.

New Jersey has some of the toughest laws in the country regarding dishonest lawyers and is one of the few states actively trying to catch the increasing number of attorneys who steal from their clients. The Office of Attorney Ethics (hereinafter referred to as the "OAE") was established by the New Jersey Supreme Court in November 1983. The OAE possesses broad ranging administrative and managerial powers and is empowered to investigate and prosecute attorneys who violate the criminal laws.

The OAE also is empowered to take emergent action against an attorney who has been convicted of a criminal violation or where there is substantial proof that the attorney has misappropriated his client's money. Such emergent action consists of applying to the Supreme Court or to the Disciplinary Review Board (hereinafter

referred to as the "DRB") for an interim temporary suspension order. The OAE also is responsible for conducting random audits of attorneys' trust and business accounts to ensure that mandatory recordkeeping practices are followed by all lawyers.

Any member of the public who has a grievance against an attorney may file a complaint against said attorney. There is a three-tiered system which is employed to handle said complaints, namely:

1. Regionalized District Ethics Committee;
2. Statewide Disciplinary Review Board;
3. The Supreme Court of New Jersey.

There are 16 regionalized district ethics committees which are entrusted with handling initial complaints at the local level. On receipt of a complaint the committee assigns the investigation thereof to one of its attorneys who then conducts an investigation as to the validity of the complaint. A written report must be prepared and submitted to the chair of the committee who then decides whether or not there has been an unethical conduct on the part of the attorney. If it is determined that there has been no unethical conduct, the matter is then dismissed. In the event that the chair determines that the attorney may have committed some type of unethical conduct, he directs that a formal complaint be prepared and served upon the respondent. A formal answer to the complaint must be filed within ten days.

A hearing panel is then impanelled to take testimony and then renders its decision. The decisions which can be reached are:

1. Dismissal of the complaint;

2. A determination that the respondent did commit some unethical conduct, not of a serious nature, and issue a private reprimand; or

3. A determination that the matter deserves more serious punishment than a private reprimand. In such cases a presentment recommending a public reprimand is filed.

A grievant whose complaint has ben dismissed by either the committee or a hearing panel can file an appeal with the DRB which has statewide powers. The DRB may either affirm the finding or remand the matter for a further hearing. In the event that a private or public reprimand is recommended a full report must be forwarded to the DRB. If the finding of a private reprimand is upheld an appropriate letter is issued to the attorney. If a public reprimand has been recommended, oral arguments are scheduled for both the attorney and/or his counsel and an attorney representing the committee. The DRB may uphold the recommendation or downgrade it to a private reprimand, but in either event the finding must be reviewed by the Supreme Court.

The Supreme Court is the final disciplinary body for attorneys. Oral arguments are not normally scheduled for any penalty, e.g., public reprimand or suspension, for less than one year. In all other cases, the Court issues an Order to the respondent to show cause why he should not be disbarred or otherwise disciplined. Oral arguments are heard and the Court then issues its decisions. Proceedings before the committee and DRB are private and confidential, but the proceedings before the Supreme Court are open to the public.

Complaints made by clients alleging attorney misconduct are usually filed with the Prosecutor's Office and not with the local police department. A client who files a claim with the Client Security Fund, alleging that the attorney has misappropriated trust funds, must file a written report with the Prosecutor's Office. R. 1:28-3(a)(5). In this way, the Prosecutor's Office is notified, sometimes for the first time, of the allegations against the attorney and should immediately commence an investigation.

It is advisable to contact the OAE immediately even though the OAE cannot supply the Prosecutor's Office with any information before a final resolution by the Supreme Court. R. 1:20-10(d) provides that the OAE has the discretion to supply information to law enforcement agencies if the attorney has been temporarily suspended or has been found guilty of unethical conduct. However, the attorney must be given ten days notice, during which time, the attorney can attempt to obtain a Protective Order from the DRB. The County Prosecutor can apply to the DRB for the release of information pertaining to the attorney upon the standard of good cause shown.

R. 1:20-6(a) provides for the automatic temporary suspension of attorneys convicted of serious crimes. For this reason, it is imperative that the OAE be immediately advised of the charges which have been brought against the attorney. Notice of indictment, filing of an accusation and the final disposition of the criminal charges must be sent, as soon as possible, to the OAE.

At the conclusion of the criminal investigation and after the imposition of sentence, the Prosecutor's Office should forward the results of the investigation to the OAE. In many instances, the attorney even though he has been convicted in the criminal courts will not voluntarily consent to disbarment. The OAE is, therefore, obliged to pursue the attorney's disbarment through the usual procedures and the criminal investigation results will be extremely helpful in the preparation of the case against the attorney. The Prosecutor's Office should endeavor to maintain a close working relationship with the OAE.

THE PROSECUTOR'S ROLE IN THE FAMILY COURT

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By the enactment of N.J.S.A. 2A:4-3.1 et seq., the State of New Jersey abolished the Juvenile and Domestic Relations Court and established the Superior Court, Chancery Division, Family Part, whose jurisdiction extends not only to the juvenile but also to his parents or guardian or a family member found to be contributing to the family crisis.

In balancing the public welfare with the best interests of the juvenile and his family, the Family Part legislation provides harsher penalties for repetitive offenders and juveniles committing serious acts. The legislation, however, differentiates between this type of offender and an offender who would be receptive to rehabilitation. That understanding is reflected in the sentencing alternatives and in the creation of the Family Crisis Intervention Units.

The creation of the Family Part and the corresponding code of juvenile justice has created a pragmatic and realistic approach for prosecutors to deal with the problems of juvenile delinquency and crimes arising out of family situations.

The following is a discussion of the legislative provisions which impact on the duties of the prosecutors in the Family Part.

Case Screening

The juvenile justice legislation provides for standardized court intake service procedures within the juvenile system. The object of the revisions under the legislation is to divert minor matters, allowing the court to focus on the serious and violent juvenile offenders.

The court intake service in each county is responsible for screening juvenile delinquency complaints and juvenile family crisis referrals. Receiving complaints on a continuous 24-hour basis, the court intake service reviews each complaint for recommendation as to whether the complaint should be dismissed, diverted or referred for court action. Complaints alleging acts which, if committed by an adult, would be a crime of the first, second, third or fourth degree, or a repetitive disorderly persons offense, are referred for court action unless the prosecutor consents to diversion. Within five days after receiving a complaint, the court intake service must advise the presiding judge and the prosecuting attorney of its recommendations, as well as any other recommendations or objections received concerning the complaint. The court may conduct a hearing to consider the recommendation for diversion providing notice and the opportunity to be heard to the prosecutor, arresting police officer and complainant or victim. Complaints may be diverted to intake conferences or to juvenile justice conference committees and the prosecutor must be promptly notified of the diversion of a complaint.

Complaints referred for court action are classified as counsel mandatory or non-counsel mandatory by the court intake

service and forwarded to the Prosecutor's Office where a determination is made to dismiss the complaint or to litigate the case in the Family Part. The prosecutor is responsible for interviewing witnesses and gathering the evidence necessary for proper prosecution of the complaint and presenting witnesses and evidence in court at the hearing on the matter. The prosecutor insures that victims and witnesses are notified of the disposition of the matter.

Detention Placement

The prosecutor and probation department monitors and approves admission of alleged delinquents to detention. The probation department monitors and approves admission to shelter care facilities.

Where it will not adversely affect his health, safety or welfare, the juvenile charged with delinquency is released pending the disposition of a case, if any, to a responsible person or agency which accepts responsibility for the juvenile and brings him before the court as ordered.

Juveniles may not be placed in detention without the permission of a judge, prosecutor and probation department. A juvenile charged with delinquency may not be placed in detention prior to disposition, except as otherwise provided by the law, unless:

1. Detention is necessary to secure the presence of the juvenile at the next hearing; or

2. The physical safety of persons or property of the community would be seriously threatened if the juvenile were not

detained and the juvenile is charged with an offense which, if committed by an adult:

(a) would constitute a crime or would constitute a repetitive disorderly persons offense or

(b) would constitute a high misdemeanor as defined by the Comprehensive Drug Reform Act of 1987.

In determining whether detention is appropriate for the juvenile, the following factors shall be considered:

1. The nature and circumstances of the events charged;
2. The age of the juvenile;
3. The juvenile's ties to the community;
4. The juvenile's record of prior adjudications, if any; and
5. The juvenile's record of appearance or non-appearance at previous court proceedings.

A juvenile eleven years of age or under may be placed in detention only if he is charged with an offense which, if committed by an adult, would be a crime of the first or second degree or arson.

An initial detention hearing must be held no later than the morning following the juvenile's placement in detention including weekends and holidays. If the juvenile is not represented by counsel at the initial detention hearing and the court continues his detention after the hearing, the court must schedule a second detention hearing to be held within two court days thereafter at which time the juvenile must be represented by counsel.

A probable cause determination shall be made where a juvenile has been charged with delinquency and has been placed in detention within two court days of the initial hearing or, where a second detention hearing is necessary, at that second hearing.

A detention review hearing with counsel must be held within 14 court days of the prior detention hearing and if the detention is continued, a detention review hearing must be held thereafter at intervals not to exceed 21 court days.

When a juvenile is detained, an adjudicatory hearing must be held no later than 30 days from the date of detention.

Pretrial Release

A variety of alternatives may be employed by the court if it chooses to release a juvenile charged with a delinquency offense:

1. Release to parents;

2. Release on the juvenile's promise to appear at next hearing;

3. Release to the juvenile's parents, guardian or custodian upon written assurance to secure the juvenile's presence at the next hearing;

4. Release into care of a custodian or public or private agency reasonably capable of assisting the juvenile to appear at the next hearing;

5. Release with imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the juvenile at the court hearing;

6. Release with required participation in a home detention program;

7. Placement in a shelter care facility; or

8. Imposition of any other restrictions other than detention or shelter care reasonably related to securing the appearance of the juvenile. N.J.S.A. 2A:4A-35 prescribes the circumstances under which a juvenile may be released on his own recognizance.

Waiver of Juvenile Matters to Adult Court Without the Juvenile's Consent

The waiver provisions as revised under the new legislation are intended to provide a more reserved and realistic procedure for waivers and do not signify a policy of wholesale waiver of juveniles to adult court.

Within thirty days of receipt of the complaint, the prosecutor may on his motion move to refer the complaint from the Family Part to the appropriate court and prosecuting authority. The Court must find:

1. The juvenile is at least fourteen years of age at time of charged delinquent act; and

2. There is probable cause to believe that the juvenile committed a delinquent act or acts which, if committed by an adult, would constitute a criminal homicide other than death by auto, robbery (first degree), aggravated arson, aggravated sexual assault, sexual assault, possession of a firearm, kidnapping, aggravated assault (second degree) and serious drug offenses. Except with respect to any of these acts or any attempt or conspiracy to commit any of these acts, the State must show that

the nature and circumstances of the charge or the prior record of the juvenile are sufficiently serious that the interests of the public require waiver.

Any delinquent acts committed by a juvenile who had previously been adjudicated delinquent on the basis of a serious offense, any delinquent acts committed by a juvenile who had been previously incarcerated and any delinquent act committed against a person in a violent manner is likewise eligible for waiver.

If in any case the juvenile can show that the probability of his rehabilitation by the use of the procedures, services and facilities available to the court prior to the juvenile reaching the age of nineteen substantially outweigh the reason for waiver, waiver will not be granted.

N.J.S.A. 2A:4A-26 requires that when there is a motion seeking waiver, the prosecutor must, within a reasonable time, file a statement with the Attorney General setting forth the basis for the motion. In addition, the court must state its reasons in writing for granting or denying the waiver motion. The Attorney General is compiling and reporting its findings to the Legislature with the objective of developing, where appropriate, guidelines as to waiver of juveniles from the Family Part.

The referral testimony of the juvenile at a waiver hearing is not admissible for any purpose in any hearing to determine delinquency or guilt of any offense.

The court waiving jurisdiction will conduct a hearing to decide whether to remand the juvenile to a juvenile or adult detention facility. The decision must be based on the best

interest of the juvenile and protection of the public and must take into account such factors as the juvenile's age and maturity, the nature and circumstances of the offense charged, the juvenile's prior offense history, the programs at each of the detention facilities and any other relevant factors. No juvenile who has been waived to an appropriate adult court may be remanded to an adult detention facility prior to this hearing.

The theoretical foundation of the juvenile court is the presumed amenability of the youthful offender to rehabilitation. Without the prospect of involuntary waiver, the juvenile court's eventual disposition would be a meaningless exercise in futility and a mere "holding action" until the juvenile graduates to the adult criminal courts. Further, the firmly antisocial youth, if treated as a juvenile, may well infect others who might otherwise have been dissuaded from future criminality.

The rehabilitative goals of the juvenile system are sound, but only if applied to appropriate offenders. The revised involuntary waiver provisions identify and remove those juveniles from the Family Part who do not belong there, preserving the Family Part for those who may still be reached.

Rights of Juveniles

A juvenile has the right to be represented by counsel at every critical stage in the proceeding which may result in the institutional commitment of the juvenile.

Any juvenile found to be competent may not waive any rights except in the presence of and after consultation with counsel, and unless a parent has first been afforded a reasonable opportunity

to consult with the juvenile and the juvenile's counsel regarding this decision. The parent and guardian may not waive the rights of a competent juvenile.

Before any waiver is accepted by the court, waiver must be executed in writing or recorded and the court must question the juvenile and his counsel to determine if the juvenile is knowingly, willingly and voluntarily waiving his right.

Juveniles charged with committing acts of delinquency are entitled to the same defenses as adults charged with crimes, offenses or violations. In addition, all rights guaranteed to criminal defendants by the United States and New Jersey State Constitution except the rights to indictment, to trial by jury and to bail, are applicable to cases arising under the juvenile legislation.

Plea Bargaining

The State Family Court Committee recommended that plea bargaining should be recognized and approved in the Family Part. While this recommendation was adopted, no guidelines for plea bargaining juvenile delinquency cases have been established.

Dispositions

When a juvenile is adjudicated delinquent, the disposition must be entered within thirty days of the adjudication if the juvenile has been placed in a detention center or shelter care facility. In all other cases disposition should be made within sixty days.

There is a presumption of non-incarceration for any crime or offense of the fourth degree or less committed by a juvenile who

has not previously been adjudicated delinquent or convicted of a crime or offense.

In ordering dispositions other than terms of incarceration to a state correctional facility the court may do the following:

Adjourn formal entry of disposition of the case for a period not to exceed 12 months for the purpose of determining whether the juvenile makes a satisfactory adjustment, and if during the period of the continuance the juvenile makes such an adjustment, dismiss the complaint;

Release the juvenile to the supervisor of his or her parent or guardian;

Place the juvenile on probation;

Transfer custody of the juvenile to any relative or other person determined by the court to be qualified to care for the juvenile;

Incarcerate the juvenile in a youth detention facility for a term not to exceed 60 consecutive days where:

(a) The act for which the juvenile was adjudicated delinquent, if committed by an adult, would have constituted a crime or repetitive disorderly persons offense.

(b) Incarceration of the juvenile is consistent with the rehabilitative goals of this act and the court is clearly convinced that the aggravating factors substantially outweigh the mitigating factors.

Where the statutorily set aggravating factors substantially outweigh the mitigating factors the court may commit a juvenile,

who has been adjudicated delinquent, to a state correctional facility. The maximum terms which may be imposed are as follows:

1.	Murder under 2C:11-3a(1) or (2)	20 years
2.	Murder under 2C:11-3a(3)	10 years
3.	Crime of the first degree, except murder	4 years
4.	Crime of the second degree	3 years
5.	Crime of the third degree	2 years
6.	Crime of the fourth degree	1 year
7.	Disorderly persons offense	6 months

Where incarceration is imposed, the court must consider the juvenile's eligibility for release under the law governing parole. The period of confinement continues until the appropriate paroling authority determines that the juvenile should be paroled; except that in no case will the period of confinement and parole exceed the maximum provided by law for such an offense. Prior to approving parole, the court must give the prosecuting attorney notice and an opportunity to be heard. The court has 30 days from the date of notice of the pending parole to exercise its power. If the court does not respond within that time period, the parole will be deemed approved.

N.J.S.A. 2A:4A-44(3) provides for extended terms of incarceration for a juvenile adjudicated delinquent on offenses which, if committed by an adult, would constitute a crime of the first, second or third degree.

Upon application of the prosecutor, the court may impose an extended term if it finds that the juvenile was adjudged delinquent on at least two separate occasions, for offenses which, if

committed by an adult, would constitute a crime of the first or second degree and was previously committed to an adult or juvenile state correctional facility. An extended term may not exceed five additional years for an act which would constitute murder, two additional years for crimes of the first and second degree and one additional year for a crime of the third degree.

An extended term may also be imposed when a juvenile is before the court at one time for disposition of three or more unrelated offenses which would constitute crimes of the first, second or third degree which are not part of the same transaction. In these cases the court may sentence the juvenile to an extended term not to exceed the maximum of the permissible term for the most serious offense for which the juvenile has been adjudicated plus two additional years.

Juveniles under the age of eleven who are adjudicated delinquent may not be committed to State correctional facilities unless adjudicated delinquent for a crime of the first or second degree or for the crime of arson.

Juveniles who are developmentally disabled as proscribed by P.L. 1977C. 82 sec. 3 including such disabilities as mental retardation, cerebral palsy, epilepsy or autism or any other condition that results in impairment of general intellectual functioning or requires treatment and services similar to those required for mental retardation, may not be committed to a state correctional facility.

The dispositional alternatives included in the delinquency provisions provide the court with greater flexibility in effectively addressing the needs of juvenile offenders retained under the court's jurisdiction. At the same time, this proposal provides greater and needed protection to society.

The Family Part has been provided with the authority to properly and effectively dispose of those serious offenses not transferred to the adult court. Specifically, the court is able to specify in any case, including homicide, that a juvenile serve a minimum term before eligibility for parole. Those provisions enable the court to more effectively address each case after considering the needs and best interest of the juvenile, his record and background, probation investigation, diagnostic assessment, circumstances and type of offense, and the need for community protection. Further, to the extent that the court is thus able to make the "punishment fit the crime," the juvenile offender will be held properly responsible for his conduct. The effect will aid the rehabilitation efforts of the court as well as act as a deterrent to the particular offender and to others.

The court is now authorized to commit a juvenile to a youth detention facility for a term not to exceed 60 days. This limited institutional commitment enables the court to insure that juvenile offenders are held accountable for their conduct by limited institutionalization where appropriate. The provisions further enable the court to effectively address the needs of particular juvenile offenders through the use of "shock effect" resulting from limited institutionalization.

The court may require a juvenile to make restitution, reparation and/or engage in community service as a condition of probation. This provision is consistent with the state-wide restitution program for juvenile offenders which went into effect September 1, 1979. Additionally, this provision also enables the court to hold the offender accountable for his behavior thereby advancing the rehabilitative goals of the system.

A particularly important feature of the new dispositional provisions is that which enables the court to require the parents or guardian to engage in the rehabilitation plan of treatment services with contempt powers available to the court in the event that such plan is not actively followed by the responsible adults. This enables appropriate juveniles to be evaluated within the context of the family unit in which the behavior problem developed.

Related Administrative Matters

In addition to making legal determinations regarding screening, prosecuting and recommending disposition of juvenile cases, prosecutors are often called upon to render advice on related administrative matters. The juvenile law legislates the following areas often of concern to law enforcement agencies.

Taking Juveniles into Custody

A juvenile may be taken into custody:

(1) Pursuant to an order or warrant of any court having jurisdiction; or

(2) for delinquency, when there has been no process issued by a court, by a law enforcement officer, pursuant to the laws of arrest and the Rules of Court.

(3) Except where delinquent conduct is alleged, a juvenile may be taken into short term custody by a law enforcement officer without order of the court when:

(a) The officer has reasonable grounds to believe that the health and safety of the juvenile is seriously in danger and taking him into immediate custody is necessary for his protection;

(b) The officer has reasonable grounds to believe the juvenile has left the home and care of his parents or guardian without the consent of such person; or

(c) An agency legally charged with the supervision of a child has notified the law enforcement agency that the child has run away from out-of-home placement.

Under no circumstances may any juvenile taken into short term custody be held more than six hours. A juvenile taken into short term custody may not be retained in a detention facility or jail.

An officer taking a juvenile into short term custody may inform the juvenile, his parents or guardian and the juvenile-family crisis intervention unit of the reason for custody and must where possible transport, or arrange to have the juvenile transported, to his home.

A law enforcement officer may also place a juvenile with a relative or responsible adult but must immediately notify the

juvenile-family crisis intervention unit of this fact and the reason for taking the juvenile into custody.

Any person taking a juvenile into custody shall immediately notify the parents or juvenile's guardian, if any, that the juvenile has been taken into custody.

Fingerprint Records and Photographs of Juveniles

N.J.S.A. 2A:4A-61 proscribes the conditions under which fingerprints of a juvenile may be taken.

(1) Where latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of a juvenile, he may, with the consent of the court or juvenile and his parents or guardian, fingerprint the juvenile for the purpose of comparison with the latent fingerprints. Fingerprint records taken pursuant to this paragraph may be retained by the department or agency taking them and shall be destroyed when the purpose for taking of fingerprints has been fulfilled. This statutory provision is ambiguous as to the authority of a law enforcement agency to fingerprint a juvenile fourteen years of age or older, taken into custody, who is charged with delinquency on the basis of an act which, if committed by an adult, would constitute a crime. However, the statute clearly indicates that fingerprint records of such juveniles may be retained by the law enforcement agency for criminal identification purposes.

If a juvenile is detained in or committed to an institution, the institution may fingerprint the juvenile for the purpose of identification. The fingerprint record may be retained until

the purpose for taking it is fulfilled, then it must be destroyed except when a juvenile is adjudicated delinquent, in which case the records may be retained by the institution.

Juveniles over fourteen years of age may be photographed for criminal identification purposes without the permission of the court or of the juvenile and his parents or guardian. Juveniles under fourteen may be photographed only with the court's permission or with the juvenile's parent's permission.

Disclosure of Juvenile Information

Disclosure of any social, medical, psychological, legal, court-related, probation or police records relating to juveniles charged as delinquents involved in family crisis is limited. Their records may be released to the Family Part, probation department, Attorney General, County Prosecutor, parents or guardian of the juvenile, attorney for the juvenile, DYFS (if providing care or custody of the juvenile), any institution where the juvenile is currently committed and any person or agency interested in the case or in work of the agency keeping the records by order of court when good cause is shown. It should be noted that records of law enforcement agencies may be disclosed for law enforcement purposes to any law enforcement agency of this state.

Information as to the identity of a juvenile, and the adjudication and disposition of the offense charged may be released to the victim or a member of the victim's immediate family. Also, the information may be released to any investigating law enforcement agency, any person or agency which filed the complaint and

the municipal law enforcement agency where the juvenile resides. The principal of the school which the juvenile attends may receive the aforementioned information solely on a confidential basis to be used to plan programs relevant to the juvenile's educational and social development. This information must not become part of the juvenile's permanent school records.

The court must approve the release of this information to anyone who is a party in any subsequent legal proceedings. However, the adjudication may only be used for the sole purpose of impeaching the juvenile as a witness.

As with the disclosure issue, the law regulating the fingerprinting and photographing of juvenile offenders involves a balancing of the interests of a juvenile's rehabilitation and the protection of society from criminal acts. Several changes to the fingerprinting procedures have been implemented. First, the most restrictive regulations governing the taking of fingerprints now apply to those under 14 years of age. The age reference now conforms to the present laws governing both disclosure and involuntary waiver.

Without regard to a juvenile's age and with the consent of the court or both the juvenile and responsible adult, any juvenile may be fingerprinted where latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of a juvenile and they are needed for comparison purposes. With the required factual basis involving the existence of a latent print and a particular juvenile suspect, it is not unreasonable to permit a fingerprint

of a juvenile to be taken either pursuant to a court order or with the consent of both the juvenile suspect and responsible adult.

Authorization of law enforcement agencies to retain fingerprints lawfully obtained has been expanded based upon a recognition that fingerprint classification is a key tool for law enforcement agencies in criminal investigations for identification purposes. This information when retained will enable law enforcement agencies to more effectively investigate other criminal offenses in which the same juvenile may be involved.

The law governing photographing of juveniles lowers to 14 years the age under which juveniles can only be photographed for criminal identification purposes with the consent of the court or of the juvenile and his parent or guardian. The new provision authorizing a juvenile under 14 years of age to be photographed without a court order if both the juvenile and parent or guardian consent remedies situations which occur when the juvenile and parents are willing to have the charges promptly investigated but must wait several hours or days until a court order is issued. Where obtaining a photograph is important to an investigation and is consented to by both the juvenile and adult, there is no legitimate reason not to permit the photograph to be taken.

Public Disclosure

The identity of a juvenile who is adjudicated delinquent shall be disclosed to the public where the offense is a crime of the first, second or third degree, or aggravated assault, destruction or damage to property over $500, or manufacture or distri-

bution of a narcotic. This section also allows the disclosure of the offense, adjudication and disposition.

If at the time of disposition, the juvenile can demonstrate a substantial likelihood that a specific harm would result from such disclosure, then a disclosure cannot be made. However, where the court finds that disclosure would be harmful to the juvenile, its reasons must be stated on the record.

Members of the news media and the public may attend any court proceedings involving a delinquency when the court determines that the disclosure would not be harmful to the juvenile and the reasons must be stated on the record.

Anyone, except where provided by law, knowingly disclosing, publishing, receiving or making use of or knowingly permitting the unauthorized use of information concerning a particular juvenile derived from the above-mentioned records or acquired in the course of court proceedings, probation or police duties may be convicted of a disorderly persons offense.

Statutory provisions regulating disclosure of information pertaining to juvenile offenders involve balancing two paramount considerations: the public's right to be informed and the juvenile's prospects for rehabilitation. Since protection of the public is a goal of the juvenile system, the public has a right to be informed of information necessary for its security. Similarly, the public through its law enforcement agencies has a right to that information necessary for the effective enforcement of the criminal law.

The need of a police agency for investigative information is no less important in solving a crime committed by a juvenile than by an adult. The interest of the public's security and protection in this situation should be the primary concern. Under legislation, records of law enforcement agencies may be disclosed for law enforcement purposes to any law enforcement agency of this state.

Authorization to disclose information of a juvenile's identity, the offense charged, adjudication and disposition has also been expanded. Now this information can be disclosed to the law enforcement agency which investigated the offense and the agency in the municipality of the juvenile's residence.

The same information as to the identity of the juvenile, the offense charged, the adjudication and disposition may be disclosed to the principal of the school where the juvenile is currently enrolled. Such information may only be used by the principal or his designee in planning programs relevant to the juvenile's educational and social development and may not become part of the student's permanent school records. This revision in the law recognizes the positive role the educational system can play towards realizing the rehabilitative goals of the juvenile justice system and makes maximum use of all resources available in addressing the needs of juvenile offenders.

Traffic Violations

N.J.S.A. 2A:4A-23 states that the commission of an act which constitutes a violation of chapters 3, 4, 6 or 8 of Title 39 or of

any supplement by a juvenile of or over the age of seventeen shall not constitute delinquency.

N.J.S.A. 2A:4A-43b(17) allows the sentencing court to postpone, suspend or revoke for a period not to exceed two years the driver's license, registration certificate or both of any juvenile who used a motor vehicle in the course of committing an act for which he was adjudicated delinquent.

Criminal Matters Arising Out of Family Situations

The new Family Part legislation allows for greater flexibility in the handling of criminal matters that arise out of family situations. The specific mechanisms for transferring such cases to the jurisdiction of the Family Court are contained in New Jersey Court Rules 3:1-5 and 3;1-6b.

1. Transfer of indictable offenses to the Family Part.

R. 3:1-5 allows for transfer of indictable offenses in the Superior Court. Under this rule indictable offenses may be transferred from the Law Division to the Family Part when the defendant waives a trial by jury and both the defendant and prosecutor consent. The Assignment Judge may, on motion of any party, transfer any indictable offense pending in Superior Court to the Family Part for trial and disposition provided the gravamen of the offense charged arises out of a family or family-type relationship between the defendant and the victim.

2. Transfer of non-indictables in Superior Court.

R.3:1-6b permits any offense or violation pending in Municipal Court to be transferred for trial and disposition under the circumstances as proscribed by R. 3:1-5c.

POLICY ON THE USE OF INFORMANTS

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I. INTRODUCTION AND PURPOSE

Contemporary law enforcement cannot effectively function without the continuous flow of information from the public as well as from members of the criminal milieu. Much of this information is provided by persons whose identity must remain confidential. Methods and guidelines for the receipt, analysis, and/or ultimate utilization of such information in criminal investigations must be carefully structured in order to ensure that resulting prosecutions are ethically and legally sustainable. As a result, the County Prosecutors Association of New Jersey has adopted the following guidelines for use by all County Prosecutors' Offices.

Persons who aid law enforcement while remaining confidential, whether or not they are paid informants, are not employees of law enforcement agencies. Nevertheless, they have a unique relationship to the agency for which they supply information. In situations where law enforcement encourages or directs the activities of that person, a special responsibility exists with that agency to utilize that relationship within a legally acceptable framework.

It is therefore necessary to formulate guidelines to establish uniform standards for informants and for law enforcement personnel when informant relationship exists. These guidelines,

hereinafter set forth, are intended to establish a minimum standard of conduct for all law enforcement personnel. Nothing herein shall be deemed to preclude a law enforcement agency from adopting supplemental and more detailed procedures as may be necessary to control the use of informants within that agency. In fact, the establishment of detailed procedures to carry out responsibilities of this policy statement should be encouraged.

II. USE OF INFORMANTS

A. Definition of Informant

For the purpose of these guidelines, an Informant is defined as an individual who furnishes information purporting to disclose a violation of a provision of the laws of this State or of the United States to a representative charged with the duty of enforcing such laws; and that said individual's identity is to remain confidential. Evidence Rule 36. Importantly, this latter definition includes persons who may: (a) themselves be criminals, (b) be only associated with criminals, or (c) be a member of the legitimate public who has reported useful information of criminal activities.

B. Confidentiality of Informants

Law enforcement personnel are encouraged to establish relationships with informants for the purpose of furthering the law enforcement goals with which the law enforcement agency is charged. In order that the special relationship be maintained, confidentiality is

often essential. Frequently the contact between the informant and law enforcement is through an individual officer with whom the informant has confidence and has established a special trust. While this personal rapport is desirable, law enforcement personnel must understand that the responsibility for the control and use of the informant is an agency function and not a personal function of the officer. Therefore, for purposes of security, continuity of relationship, and the maintenance of agency integrity, the identity of all informants used by an agency should be made known to an appropriate supervising officer of that agency designated for that purpose, and the relationship should be documented in the agency's confidential records established for that purpose. Quite obviously, access to such information must be strictly supervised.

C. Evaluation of Informants

No person shall be utilized as an informant unless the agency believes that such person is able to furnish reliable enforcement information or other lawful services to a law enforcement agency. In considering the use of an informant, the following factors should be weighed:

1. The risk that use of an informant in a particular investigation or the conduct of particular informant may, contrary to instructions, violate individual rights, intrude upon privileged

communications, unlawfully inhibit the free association of individuals or the expression of ideas, or compromise in any way the investigation or subsequent prosecution.

2. The nature and seriousness of the matter under investigation, and the likelihood that information which an informant could provide is not readily available through other sources or by more direct means.

3. The ability of the agency to control the informant's activities while he is acting on behalf of the agency and to ensure that his conduct will be consistent with applicable law and instructions.

4. The motivation of this informant.

5. The potential value of the information an informant may be able to furnish in return for a concession the government must make for his cooperation. As such, all agencies, including municipal police departments, are not to make any promises, express or implied, with regard to prosecutive consideration. As such, all agencies, including municipal police departments, are not to make any promises, express or implied, with regard to prosecutive consideration without first obtaining the express approval of the Prosecutor or his designee. Particular attention should be given to

avoid any unauthorized promises relative to witness relocation and personal protection.

6. If the proposed informant is under 18 years of age, the risk and propriety of using an underaged informant. In such a circumstance, the written consent of parent or legal guardian should be considered.

7. The informant's state or federal parole or probation status. Permission from parole and probation officers should be considered.

8. Whether an informant is currently under indictment and if so, the nature and gravity of the offense.

9. Whether the informant has been released on bail. If so, the nature and gravity of criminal arrests and convictions should be carefully considered.

10. Whether an informant has a prior criminal record. If so, the nature and gravity of criminal arrests and convictions should be carefully considered.

11. Whether an informant is a fugitive from or an absent material witness to any criminal prosecution. Unless exigent circumstances so require, fugitives should not be used as informants. Arrangements should be made as soon as practicable for the imposition of bail. Thereafter, the informant may be utilized in his non-fugitive status.

12. Whether the informant is currently or has in the past assisted another agency and the reliability of the information and the degree of cooperation he extended. Consideration should be given to contacting that agency to ensure that no duplication of effort occurs and to inquire into the informant's past reliability and truthfulness.

D. Verification of Informant

In all cases involving informants who are to receive monetary or other valuable compensation, or who are to receive some form of prosecutive consideration, and in all cases involving persons with criminal records or reputations for involvement or association with persons with criminal records, it shall be the responsibility of the law enforcement agency to assure that an appropriate background investigation of the informant is conducted in order to determine whether that agency will use or continue to use that informant.

E. Documentation of Information Received from Informant

Information received from informants should be documented on approved forms prescribed by the law enforcement agency and records of such information received shall be maintained in the manner prescribed by that agency.

F. Documentation of Contacts with Informants

In cases involving informants who are receiving monetary or other valuable compensation, or receiving prosecutive

consideration, and involving persons with criminal records or reputations for involvement or association with persons with criminal records, law enforcement personnel shall document in writing any contact with the the informant, whether or not that contact results in the receipt of information. The documentation shall be on forms prescribed by the law enforcement agency and filed with that agency in accordance with the prescribed procedures of that agency.

G. Payment to Informants

All payment of monies to informants shall be documented in accordance with the procedures established by that agency for that purpose. Records of payment of monies shall be maintained so that they conform to generally accepted accounting procedures which will allow for appropriate audit of expenditures while at the same time protecting the confidentiality of the informant.

H. Promises of Consideration

No law enforcement agency or law enforcement personnel shall make any promise, express or implied, of any prosecutive consideration to an informant without the express approval of the Prosecutor or his designee. Again, particular attention should be given to avoid any unauthorized promises relative to witness relocation and personal protection.

I. Financial Relationships with Informant

An informant shall be under a continuing obligation to fully disclose to the agency any financial relationship which exists with any employee of that agency. Where an employee of an agency has a financial relationship with an informant and is aware of the use of that informant by the agency, said employee shall be under continuing obligation to fully disclose to the agency all details concerning that relationship. The agency shall consider the details of any such financial relationship existing between an informant and one of its employees in deciding whether to use or continue to use said informant, and in deciding which personnel of the agency shall be authorized to deal directly with informant.

J. Instructions to Informants

Whenever the activities of an informant are to any extent under the direction or control of a law enforcement agency, the agency shall issue to the informant the following instructions:

1. The informant has no police powers, is not an employee of the agency, and has no authority to bind or commit the agency in any manner.
2. The informant is not authorized to initiate any action in the capacity of informant without the prior knowledge and approval of the agency.
3. The informant is not authorized to initiate any plan to commit criminal acts, implant in the mind

of an otherwise innocent person the disposition to commit a criminal offense, or use any unlawful investigation techniques (e.g., breaking and entering, unlawful electronic surveillance, opening or otherwise tampering with mail).

4. The informant is never to participate in any acts of violence and is not authorized to participate in criminal activities of persons under investigation, except insofar as the agency determines that such participation is necessary and appropriate to obtain information needed for purposes of prosecution.

K. Violations by Informants

1. Under no circumstances shall the agency take any action to conceal the commission of a crime by one of its informants.

2. Whenever the agency learns that an informant used in investigation criminal activity has violate the instructions set forth in Section IIJ in furtherance of his assignment, the program supervisor shall be notified and the continuation of the informant scrutinized.

3. Whenever the agency has reliable information of the commission of a crime by an informant which is unconnected to his assignment, the appropriate law enforcement authority shall be advised in order that enforcement authority shall be advised in

order that enforcement action may be taken. In exceptional circumstances in which notification to the appropriate law enforcement authority for enforcement purposes would jeopardize and ongoing investigation or endanger the life of an agent, the compelling need for immediate disclosure may cease to exist. In such cases the Prosecutor shall be immediately advised and full disclosure to the enforcing agency shall be made as soon as the need for the restriction on dissemination is no longer present. Where complete dissemination cannot immediately be made to the appropriate law enforcement agency, the agency shall preserve all evidence of the violation for possible future use by the appropriate prosecuting authority. Nothing herein shall prevent full and immediate disclosure to the appropriate law enforcement agency if, in the judgment of the prosecutor such action is necessary even though an investigation might thereby be jeopardized.

4. In determining the extent of disclosure to the appropriate law enforcement and prosecutive authorities of criminal activity by agency informants, the Prosecutor shall consider the following factors:

a. Whether the crime is completed, imminent or inchoate;

b. Seriousness of the crime in terms of danger to life and property;

c. Whether the crime is a violation of state or federal law, and the degree of the offense;

d. The degree of certainty of the information regarding the criminal activity;

e. Whether the appropriate authorities already know of the criminal activity and the informant's identity.

f. The danger to any police agent; and

g. The significance of the information the informant is providing, or will provide, and the effect on the agency's investigative activity of notification to the other law enforcement agency.

5. If the investigation unit supervising the informant desires to continue making use of an informant or defendant-informant after it has reason to believe that he has committed a serious criminal offense - the agency shall consult the Prosecutor or his designee for a determination whether continued use should be made of the individual by the agency.

6. Notwithstanding any provisions contained in this section, in the event an informant is found to be unreliable or dangerous such that his continued use would be detrimental, his utilization by the agency

shall be terminated as soon as practicable with appropriate notification.

L. Disclosure of Informant's Identity

Law enforcement must be aware that involuntary disclosure of the identity of a confidential informant may occur. Initially, the privilege afforded a law enforcement agent to refuse to disclose the identity of his informant is clearly not absolute. Evidence Rule 36. If the "identity of the person furnishing the information has already been otherwise disclosed or disclosure of his identity is essential to assure a fair determination of the issues," disclosure may be ordered. As such, and where feasible, prior to the inception of an investigation, an evaluation of the likelihood of informant identity disclosure should be made. A primary factor to consider in this assessment should be the degree of personal participation by the informant in the criminal scheme. Less participation suggests less likelihood of mandated disclosure.

ELECTRONIC SURVEILLANCE

Prosecutor Paul M. DePascale
Hudson County Prosecutor's Office

A. Wiretap Authorizations

1. Initial Authorization

The Attorney General, a County Prosecutor or the Chairman of the State Commission of Investigation may give written authorization to an appropriate law enforcement agent to submit an electronic surveillance application. In the event that any of the above officials are absent or disable, the authorization may be granted by a person designated to act for such official. N.J.S.A. 2A:156A-8. Judges authorized to issue electronic surveillance orders have construed "absence" to mean actual physical absence from this jurisdiction as opposed to just unavailability. For this reason, a designee should be named in writing in advance of any possible absence and that designee should state in the written authorization that he or she is the designee and that his supervisor is disabled or out of this jurisdiction.

Not all criminal activity can be the subject of an electronic surveillance application. Those crimes which may be investigated using this technique are limited to murder, kidnapping, gambling, robbery, bribery, extortion, loansharking mayhem, sale of or possession with the intent to sell controlled dangerous substances, arson, burglary, embezzlement, escape, forgery,

receiving stolen property where the potential sentence exceeds one year, alteration of motor vehicle identification numbers (VIN), larceny where the potential sentence exceeds one year, unlawful manufacture, purchase, use or transfer of firearms, or unlawful possession or use of bombs or explosives, and conspiracy to commit any of the foregoing offenses. N.J.S.A. 2A:156A-8.

Only certain judges are designated by the Chief Justice to review and authorize electronic surveillance applications. The judges selected are Assignment Judges in various counties chosen to give appropriate geographical coverage to the entire State. The list of judges authorized to issue electronic surveillance orders is updated and published each court term by the Chief Justice through the Administrative Office of the Courts. The designated judges have themselves determined that various County Prosecutor's Offices should be the responsibility of a particular issuing judge. Only if that judge designates another wiretap judge can the application be taken elsewhere.

The application must show the following:

(a) The applicant has the authority to make the application;

(b) The technicians and law enforcement officers who are to conduct the surveillance are qualified to do so;

(c) The identities, if known, of the subjects of the investigation and the details of the particular criminal offense which is being investigated;

(d) The type of communication which will be intercepted and a showing that there is probable cause to believe that such communications will be intercepted;

(e) The character and location of the telephone or of the location where a bug will be installed;

(f) The time period during which electronic surveillance will be necessary and a statement as to whether or not it will be necessary to intercept more than one crime related communication; and

(g) A statement containing the reasons why the use of conventional law enforcement investigative techniques has not or cannot be successful in investigating the criminal activity. N.J.S.A. 2A:156A-9.

In the event that the communications facilities are public or the communications are privileged, the application must show that there is a "special need" to intercept these communications. The privileges are those of doctor-patient, priest-penetant, attorney-client, husband-wife and newspaperman-source. N.J.S.A. 2A:156A-11.

The initial authorization can be for a maximum of twenty days. Thereafter two ten day extensions can be obtained. N.J.S.A. 2A:156A-12. Each extension application should be appropriately authorized. If, after using the initial period and the two extensions (forty days), it is necessary to continue the electronic surveillance a new twenty day application can be made if, "the application is based upon new evidence or information different from and in addition to the evidence or information offered to support the prior order, regardless of whether such evidence was derived from prior interceptions or from other sources." N.J.S.A. 2A:156A-10. Therefore conversations

intercepted during the last ten day extension are "different from and in addition to" the material previously submitted and can be used in support of a new twenty day application.

2. Inter-County Investigations

N.J.S.A. 2A:156A-8 does not limit the authority of a County Prosecutor to the particular county in which he or she sits in regard to the authorization of electronic surveillance applications. Therefore any County Prosecutor can authorize the submission of an electronic surveillance application for a telephone or location anywhere in the State. This however is not the practice which has been developed and is now followed. In those cases where an investigation being conducted by one County Prosecutor's Office leads into another County and requires electronic surveillance in that County, the Prosecutor of the requesting County will contact the Prosecutor of the County in which the new facility is located and inform him or her of the fact that an application is being prepared for that facility. After the application is prepared and authorized in writing by the investigating Prosecutor the application is brought to the second County Prosecutor for his or her review. The second County Prosecutor also signs a written authorization which has been prepared by the investigating County. When all appropriate authorizations have been obtained the applicant may go to the issuing judge designated for the investigating County, regardless of the location of the telephone facility. When it is anticipated that the second County or Counties will actively participate in the investigation being conducted, this fact should be stated in

the affidavit along with the qualifications and experience of those Investigators.

3. Related Electronic Surveillance Problems

The New Jersey Supreme Court decided in the case of State v. Merrell Hunt and Ralph Pirillo, Sr., 91 N.J. 338 (1982), on August 18, 1982 that the telephone toll records of the defendant Hunt were improperly procured because they were obtained without any prior judicial sanction or proceeding. The rationale of this decision by the wiretap judges has resulted in the requirement that all requests for toll records and pen registers must be supported by probable cause and must be submitted in the same format as electronic surveillance applications. Therefore applications for toll records or for pen registers must be taken to the appropriate wiretap judge after being authorized by the County Prosecutor. Since these types of applications are not included anywhere in N.J.S.A. 2A:156A-1, et seq., and since absolutely no guidance has been given by the Supreme Court, the time periods for pen register applications have generally followed the time periods prescribed in the statutory electronic surveillance as outlined in N.J.S.A. 2A:156A-12.

Telephone activated electronic digital paging devices ("beepers") are frequently utilized to facilitate communications in organized criminal activities. The proliferation of these devices for use in criminal purposes, particularly narcotics trafficking, has given rise to another investigative technique in the field of electronic surveillance. That technique is the duplication of the target beeper. Since this duplicate beeper

will provide information similar to that obtained from toll billing records and pen registers, the electronic surveillance application format should be followed when requesting authorization to receive and monitor such beepers.

In essence this decision and the way it is being interpreted has essentially taken away two intermediate investigative steps which traditionally preceded a wiretap and insured, prior to the actual interception of communications, that there was probable cause to believe that criminal activity was taking place. Now, since the standard of probable cause is the same for tolls, pen registers, beeper duplication and wiretaps, there is little or no reason to pursue the intermediate steps when there is probable cause to conduct electronic surveillance.

4. Minimization

The proper execution of an order authorizing electronic surveillance requires that reasonable, good faith efforts be made to minimize or eliminate non-pertinent conversations. Minimization is necessary to protect Fourth Amendment privacy rights. Failure to make reasonable efforts to minimize will constitute an unreasonable search and seizure. State v. Catania, 85 N.J. 418 (1981).

Catania recognizes two kinds of minimization - extrinsic and intrinsic. Extrinsic minimization is accomplished by reducing the hours and duration of interception. Intrinsic minimization requires the terminating of individual conversations that appear to the monitor to be non-pertinent. Until Catania, New Jersey required only extrinsic minimization. State v. Dye, 60 N.J. 518

(1972). The Catania decision conforms New Jersey law with federal law.

Guidelines for intrinsic minimization may be found in Scott v. U.S., 436 U.S. 128 (1978). Police must make reasonable efforts to minimize, but they are not expected to terminate every non-pertinent conversation. Statistical analysis of the investigation will not resolve the question of reasonableness. If good faith efforts to minimize are not made, the evidence may be suppressed even if every call is relevant.

What efforts must be made depend on factors unique to each investigation. Investigation of the conspiracy allows more extensive interception as do the use of codes. At the early stages of electronic surveillance, monitors have more latitude and may intercept all but the most innocent conversations. Phones equipped with call waiting may require more extensive monitoring since a new call may begin while the first is in progress.

A technique called "spot monitoring" was specifically approved in Catania. Spot monitoring is accomplished by terminating the interception of non-pertinent conversations for a period of time then resuming the interception to see if the conversation turned pertinent. If the conversation has turned pertinent, full interception can take place; if not, the officer can terminate for an additional period of time.

B. Consensual Interceptions

1 Consensual interceptions usually refer to the use by law enforcement officers of civilian third parties to engage in recorded conversations with target individuals, either face to

face (recorded by a body recorder or transmitter) or by telephone (recorded through an induction coil). In these situations, any such interception must be approved by the County Prosecutor. The Prosecutor must find that there is a "reasonable suspicion" that evidence of criminal conduct will be derived from the interception requested. N.J.S.A. 2A:156A-4.c. This application to the Prosecutor for a consensual authorization should be made by completing the form prepared for such applications by the Division of Criminal Justice (DCJ 4-C). It should be noted that, unlike an application for a wiretap or bug, this section does not specifically authorize a County Prosecutor to nominate a designee to act in his absence (although it states the Attorney General may do so). The Prosecutor alone should give consensual authorizations.

2. N.J.S.A. 2A:156A-4.c applies only to those situations in which the conversation of the subject of the investigation is being recorded on tape or by some similar method. If a third party is engaging in a conversation with a target and the law enforcement officer is merely overhearing the conversation by listening to the same telephone instrument that the third party is using or by listening in on an extension telephone, this section does not apply. State v. McDermott, 167 N.J. Super. 271 (App. Div. 1979). Therefore, in the case of "overhears" which are not being recorded, no application need be made to the County Prosecutor for authorization.

3. There is another kind of "consensual recording" which is permitted by N.J.S.A. 2A:156A-4.b. This section permits any law

enforcement officer to record conversations to which he is a party. This procedure is most usually utilized by police officers acting in undercover capacities. Such recordings require no authorization from the County Prosecutor or the Court. Record of such instances should be kept however since the Division of Criminal Justice requires quarterly reports on this type of consensual recording.

PROCEDURES FOR CONSENSUAL INTERCEPTIONS

Former Assistant Prosecutor John A. Matthews, III
Essex County Prosecutor's Office

In New Jersey, N.J.S.A. 2A:156A-1, et seq. sets forth the circumstances under which wire or oral communications can be intercepted. Within that statute 2A:156A-3 provides for criminal penalties for any violation or unlawful interception and 2A:156A-24 provides for civil damages for any violation of the statute. There are, however, certain exceptions to the statute which are formally contained in 2A:156A-4. Two of those exceptions affect law enforcement officials and must be specially monitored by the Prosecutor. The first of these two exceptions (2A:156A-4(b)) permits an investigative or law enforcement officer to intercept either his conversation or another officer's conversation where that officer requests or requires him to intercept that conversation. The other applicable exception is 2A:156A-4(c) which authorizes a person acting at the direction of an investigative or law enforcement officer to intercept wire or oral communication when that person is a party to the communication, or a party to the communication has given prior consent to the interception and when the Attorney General, his designee or a County Prosecutor determines that there exists a reasonable suspicion that evidence of criminal conduct will be derived from the interception.

2A:156A-23 (c and d) require that reports be submitted by the County Prosecutor to the Attorney General for any and all interceptions made pursuant to the two above-cited statutes.

Since any individual who violates the provision of the Electronic Surveillance Act is subject to both criminal and civil penalties, and since any violation of the statute will ultimately result in the suppression of conversations and possible loss of criminal cases, it is essential that the Prosecutor's Office monitor closely all interceptions made pursuant to 2A:156A-5 (b and c). In order to monitor and control such interceptions the following guidelines should be established within each office.

GUIDELINES

(1) An annual inventory should be conducted by each Prosecutor of any and all electronic surveillance equipment owned or utilized by local police departments. All police departments should be advised to report purchase of any equipment to the Prosecutor. The purpose of this requirement is to have available on hand a list of equipment within each department and to act as a reminder to the department that the Prosecutor must be advised whenever equipment is used.

(2) The Chief of each police department should be advised in writing of the requirements of N.J.S. 2A:156A-4 and of the consequence (both criminal and civil) of a violation of the statute.

(3) The forms from the Attorney General's Office should be used for every consensual request.

(4) Someone within the Prosecutor's Office should be designated to handle all requests for consensual interceptions. This individual should be responsible for the preparation and for review of the information contained on the form and should be the person to sign the form in the lower left-hand corner. This person should also be responsible to make sure that all other signatures are properly attached and should be the person to bring the form to the Prosecutor for his signature.

(5) Each police department should be required to obtain approval prior to any use of electronic equipment.

(6) Each police department should be required to submit monthly reports to the Prosecutor detailing any use of equipment which they have in their possession.

(7) Immediately upon the interception of any communication the original tape should be turned over to a designated individual within the Prosecutor's Office for copying and safekeeping.

(8) Immediately upon completion of the investigation, a report should be submitted to the Prosecutor's Office detailing the number of conversations intercepted, the number of arrests and the arrest charges.

(9) At least annually the provisions of the statute should be provided to each police department and each police department should be very strongly advised that any violations of the statute will be prosecuted.

TELEPHONIC SEARCH WARRANTS

Assistant Prosecutor Howard N. Wiener
Union County Prosecutor's Office

Exigent circumstances will not automatically justify a warrantless search. Even if there is insufficient time to prepare a written affidavit or personally appear before a judge for an oral application, a telephone application should be considered.

The first New Jersey case approving the use of a telephone search warrant was decided in 1975. In 1974, an assistant prosecutor and county detective telephonically contacted a Superior Court Judge at his residence at 12:35 a.m. to apply for a search warrant. They gave sworn testimony that contraband was located in an apartment and without quick action the evidence would be lost. The judge found probable cause and authorized the search, directing that the assistant prosecutor advise any persons at the apartment that the officers were acting pursuant to a judge's authorization.

The defendant's motion to suppress the evidence was denied by the Court, which found that "the behavior shown... is to be not deterred, but encouraged, at least insofar as seeking judicial review is concerned." State v. Cymerman, 135 N.J. Super. 591, 604 (Law Div. 1975).

In 1979, the Appellate Division affirmed the suppression of heroin seized by police because a warrant had not been obtained.

In that case, police received a tip from an informant at 9:45 p.m. that three people would be bringing heroin from New York City to a Newark apartment. At 10:05 p.m., the officer who received the information contacted three other officers; within fifteen minutes the informant reported that the heroin was being cut and packaged at the specified Newark apartment. At 10:40 p.m. (less than an hour after first receiving the tip), the police entered the building. When they announced themselves as policemen, they heard people scurrying around in the apartment and entered, seizing heroin and other evidence.

The Appellate Division found that even though a formal, in-person application could not be made because of time constraints, a telephonically issued warrant could have been applied for. Significantly, although the police had less than an hour to act, they could not rely on exigent circumstances to justify the warrantless search.

In three cases decided on May 16, 1983, the New Jersey Supreme Court approved telephonic search warrants and established guidelines for their use. State v. Valencia, 93 N.J. 126 (1983); State v. Guerra, 93 N.J. 146 (1983); State v. Apostolis, 93 N.J. 143 (1983).

Telephonic search warrants are hybrids, neither the equivalent of warrants nor searches without warrants. At the hearing on a motion to suppress, the State must show that exigent circumstances justify the failure to obtain a written warrant and that other procedural safeguards have been met. If the State meets that burden, the search is deemed to have been with a

warrant and the burden shifts to the defendant, who must overcome the presumptive validity of the search. See State v. Kasabucki, 52 N.J. 110 (1968).

The guidelines are a common sense way of balancing the needs of law enforcement with the protections afforded by the Fourth Amendment. Of course, the applicant must be able to satisfy the Court that probable cause exists to believe that contraband or evidence is located on the person or in the premises of vehicle to be searched. See Illinois v. Gates, 462 U.S. 103 S.Ct. 2317 (1983). The contents of the oral (testimonial) application are the same as a written affidavit; namely: the qualifications of the applicant, statements establishing probable cause, description of what is to be searched and what is to be seized. In addition, the following guidelines must be followed:

(1) the applicant must adequately identify himself to the Court and specify the purpose of the request. If the judge is not personally acquainted with the applicant, some measures should be taken to verify identity;

(2) the basis for the information to be presented to the judge must be given;

(3) all information given must be under oath or affirmation. The oath may be given at the beginning of the presentation or the officer may conclude by stating that he swears the truth of the statements previously made. The absence of an oath or affirmation is a fatal defect; the judge must

make a contemporaneous record of the application in the form of a tape or stenographic recording or written notes. The record should include the oath, statement of exigency for telephonic application, contents of the application (qualifications, probable cause, etc.), and factual findings as to exigency and probable cause. The record should also include the specific terms of the authorization to search;

(4) promptly after the search is authorized, the judge must issue a written warrant which should be filed with all other documents (notes, tapes or stenographic transcript) with the Clerk of the Court.

Once the police officer receives authorization to search, he still lacks a document to verify to present to the object of the search. Having a written search warrant may mean the difference between a peaceful, orderly search or resistance by skeptical subjects.

Although not part of the opinions in Valencia, Guerra and Apostolis, the Court may authorize the police officer to complete a written warrant pursuant to the Court's specific terms (guideline 4). The written warrant should describe what is to be searched and what items may be seized; the hours for execution of the warrant; the duration of the authorization to search and the name of the judge authorizing the search.

Since the basis for a telephonic warrant is the exigency of the situation, the duration should be limited, perhaps to 24 hours or less, rather than the usual ten days.

The name of the judge should be written in such a way that it not appear to be his signature. Below the judge's name the officer should indicate that the warrant was verbally approved and write the time of the approval.

If the officer requests authorization to complete a written search warrant, the judge's notes should include the procedure used in completing the warrant. The record should show that the warrant was read to the judge after completion and that the judge gave permission to write his name and the time of authorization.

All written notes, tape recordings, the warrant written by the officer and the confirmatory warrant issued by the judge should be filed with the Clerk of the Court. The return of the warrant should be made the same way as any other warrant.

The Appellate Division considered the validity of a telephonic search warrant in State v. Manzi, 195 N.J. Super. 341 (App. Div. 1984). In Manzi, the local police responded to a report of a residential burglary. The responding detective inspected the premises and saw that the glass in the kitchen door was broken. He also observed what appeared to be a "speed lab."

The detective contacted the magistrate by telephone to apply for a search warrant. All requirements by a valid telephone application were met - but one. The record included no evidence that the detective was under oath and the warrant was held to be invalid.

It is essential that the oath be administered. If a tape recording is made the oath should be included. Where there is no recording, the judge's notes should indicate that the oath was given.

COMPLAINTS AGAINST JUDGES, PUBLIC OFFICIALS, STATE POLICE, LOCAL POLICE AND PROSECUTOR'S PERSONNEL

Deputy First Assistant Prosecutor Peter J. Francese
Essex County Prosecutor's Office

A. COMPLAINTS AGAINST JUDGES:

When a complaint or information is received by a County Prosecutor which indicates the possibility of criminality on the part of a member of the Judiciary, the Prosecutor, if the case involves a Superior Court Judge, will confer with the Director of the Division of Criminal Justice as to the further conduct and procedures to be employed in the investigation. After such consultation, the Prosecutor and the Director of the Division of Criminal Justice will mutually determine whether the matter is one which requires the immediate notification of the appropriate Assignment Judge and/or the Chief Justice.

The Prosecutor, if the case involves a municipal magistrate, will exercise his discretion in his determination whether to confer with the Director of the Division of Criminal Justice and/or the appropriate Assignment Judge.

In cases involving the investigation of allegations of criminal wrongdoings by judges, it is appropriate to discuss whether it would be prudent for the Division of Criminal Justice to supercede the local County Prosecutor in such an investigation.

The agency that ultimately conducts the investigations should consider contacting the State Police Central Security Bureau

concerning its possible receipt of reports of threats or harassments directed to the Judicial person under investigation in order to determine whether the complainant against the Judicial officer may have been the author of a threat against the judge.

When a similar complaint or information is received, either by the Division of Criminal Justice or the State Police, the appropriate County Prosecutor should be conferred with to determine what agency and method of investigation will be employed in the particular case. Investigations once completed should include notification of the results to the other agencies aforementioned.

Complaints which are found to be non-sustainable, as criminal matters, should be considered for referral to the Committee on Judicial Conduct with advisement of such referral being made to the County Assignment Judge.

B. COMPLAINTS AGAINST PUBLIC OFFICIALS:

Complaints against public officials cover a broad area of possible criminal wrongdoings. Complaints against local public officials can usually be appropriately investigated and if necessary, prosecuted by the local Prosecutor's Office.

In cases involving allegations against state officials, it is appropriate for the local Prosecutor to consult with the Director of the Division of Criminal Justice, to determine what agency is the appropriate authority to investigate and, if necessary, prosecute the case. Considerations such as available manpower, case load and necessary specialized expertise should be explored

in determining at which level a specific case is more appropriately handled.

C. COMPLAINTS AGAINST THE NEW JERSEY STATE POLICE:

When a complaint or information is received by the New Jersey State Police which indicates the possibility of criminality on the part of a member of the New Jersey State Police, the Superintendent of the State Police will confer with the Director of the Division of Criminal Justice as to the further conduct of the investigation and as to the procedures, if any, required to initiate appropriate prosecutorial action, either by the Division of Criminal Justice or a County Prosecutor's Office. The Attorney General should be made aware of any decision reached by the Director and the Superintendent, and where appropriate under all the circumstances, should be involved in the discussions leading to the determination of whether the matter will proceed administratively or criminally.

In accordance with the policy of cooperation among the Division of Criminal Justice, County Prosecutors and the New Jersey State Police, the appropriate County Prosecutor or Prosecutors should usually be advised by the Division of Criminal Justice of any such investigation and the results. He may also request and be provided with progress reports.

If the Prosecutor receives such complaints or information involving criminal or other improper conduct of a member of the New Jersey State Police, the Prosecutor, should as soon as possible notify the Superintendent of the New Jersey State Police. If the matter involves criminal conduct or serious misconduct, the

Director of the Division of Criminal Justice should also be notified.

If requested by the Prosecutor, he should be informed of the results and be provided with progress reports.

Generally, the New Jersey State Police is the appropriate agency to investigate the matters referred to above. The investigation should either be solely by the New Jersey State Police, or cooperatively with the Prosecutor or the Division of Criminal Justice as the circumstances indicate.

D. COMPLAINTS AGAINST LOCAL POLICE DEPARTMENTS:

When a complaint or information is received by a County Prosecutor which indicates the possibility of criminality on the part of a member of a county or municipal police department, the Prosecutor will exercise his discretion as to whether it is appropriate to notify either the Director of the Division of Criminal Justice and/or the Superintendent of the State Police concerning the matter. The Prosecutor, however, except under the most unusual circumstances, will notify the chief of police of the department in question as to the general nature of the allegations and his intention to initiate an investigation into same. When a similar complaint or information is received by either the Director of the Division of Criminal Justice or the Superintendent of the State Police, the appropriate County Prosecutor, because of his office's probable more frequent contact with the subject officer, should be conferred with concerning the method of investigation to be employed. Also a discussion should occur to determine which authority should conduct the investigation and

which agency, if any, should notify the chief of police or department concerned.

It is advisable for each County Prosecutor, the Director of the Division of Criminal Justice and the Superintendent of the State Police to maintain, in a central file, an index of all dispositions of cases involving police officers who have been the subject of complaints, information, investigations and indictments.

E. COMPLAINTS AGAINST PROSECUTORS' PERSONNEL:

Complaints against personnel include both formal municipal court complaints as well as non-formal accusations alleging violations of the criminal laws by any employees of a Prosecutor's Office. When such charges are made to a County Prosecutor's Office, it is paramount that any conflict of interest or appearance of same be avoided. Once an initial determination is made by the Prosecutor that the matter is not one frivolous in nature, the matter should be immediately reported to the Director of the Division of Criminal Justice, requesting that the Division of Criminal Justice supercede the Prosecutor's Office in the matter. While there may be occasions where a preliminary investigation can be conducted by the Prosecutor's Office, no affirmative investigative actions should be undertaken by members of the local Prosecutor's Office unless same is absolutely necessary under the particular facts and circumstances presented by the specific allegations. Once the investigation of the matter has been completed by the Division of Criminal Justice, the Director of the Division of Criminal Justice should notify the local County

Prosecutor of the determination he has made in the matter. Allegations that are non-criminal matters, but may be matters requiring administrative disciplinary action, are handled by the local County Prosecutor, with advisement to the Director of the Division of Criminal Justice being within the discretionary judgment of the County Prosecutor.

Any decision to suspend an employee pending completion of the investigation is a determination to be made by the County Prosecutor. It is advisable that during the course of an investigation, that the County Prosecutor be continually updated by the Director of the Division of Criminal Justice as to developments which would impact on the County Prosecutor's determination as to the appropriate employment status of the individual being investigated.

GUIDELINES FOR MAKING MOTOR VEHICLE STOPS

Assistant Prosecutor Stephanie P. Brubaker
Warren County Prosecutor's Office

On March 27, 1979, the United States Supreme Court decided Delaware V. Prouse, 440 U.S. 648 (1979) and held that the random stopping of automobiles by the police is violative of the Fourth and Fourteenth Amendments. Police must have a reasonable suspicion of an offense to stop a vehicle.

Prior to the above decision, N.J.S.A. 30:3-20 had been judicially construed to permit police officers to make purely random stops of vehicles for license and registration checks. The Prouse decision overruled our New Jersey precedent and is summarized as follows:

> ...At 7:20 p.m., on November 30, 1976, a New Castle County, Delaware patrolman in a police cruiser stopped the automobile occupied by respondent. The patrolman smelled marijuana smoke as he was walking toward the stopped vehicle, and he seized marijuana in plain view on the car floor. Respondent was subsequently indicted for illegal possession of a controlled substance. At a hearing on respondent's motion to suppress the marijuana seized as a result of the stop, the patrolman testified that prior to stopping the vehicle he had observed neither traffic nor equipment violations, nor any suspicious activity, and that he made the stop only in order to check the driver's license and registration. The patrolman was not acting pursuant to any standards, guidelines or procedures either pertaining to document spot checks, promulgated by either his department or the State Attorney General. Characterizing the stop as "routine," the patrolman explained, "I saw the car in the area and was not answering any complaints so I decided to pull them off..."

> ... The question is whether it is an unreasonable seizure under the Fourth and Fourteenth Amendments to stop an automobile, being driven on a public highway, for the purpose of checking the driving license of the operator and the registration of the car, where there is neither probable cause to believe nor reasonable suspicion that the car is being driven contrary to the law governing the operator of motor vehicles or that either the car or any of its occupants is subject to seizure or detention in connection with the violation of any other applicable law. ...
>
> ... Accordingly, we hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check the driver's license and the registration of the automobile are unreasonable under the Fourth Amendment. This holding does not preclude the States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock type stops is one possible alternative. We hold only that persons in automobiles on public roadways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers...

This ruling affects the discretion of police officers in making routine or random stops of vehicles and the discretionary method of conducting vehicle checks.

GUIDELINES TO MOTOR VEHICLE STOPS

Additional considerations must be made in delineating between random or routine motor vehicle stops, Terry investigative stops, and mere summary inquiries or detentions by police officers.

1. MOTOR VEHICLE STOPS

A. Random Motor Vehicle Stops - A General Perspective

In Prouse, the Supreme Court defined all random motor vehicle stops as unconstitutional and unreasonable seizures under the United States Constitution. New Jersey Courts interpreted the Prouse decision to be applied prospectively only. State v. Carpentieri, 82 N.J. 546 (1980). Prior to Prouse, New Jersey law permitted random motor vehicle stops.

The Prouse decision does not prohibit conducting license, registration or equipment checks where all traffic is brought to a complete stop and some vehicles are detained for safety and regulatory inspection. Vehicle checks should only be conducted on a date and time ordered by a supervisory authority and in accordance with established procedures, as noted. (See Exhibits A and B).

B. Routine Motor Vehicle Stops

1. Road Blocks/Check Points

In disapproving road blocks set up by the exercise of unbridled discretion of police officers, the Appellate Court articulated guidelines for constitutionally acceptable check points and roadblocks in State v. Kirk, 202 N.J. Super. 28

(App. Div. 1985). Specifically, that Court suggested that such stops of motor vehicles may be approved if:

a) the road block was established by a command or supervisory authority;

b) the road block was expressly aimed at a designated geographic area and set at a specified time; and

c) the road block's location was set at a place and on a date based upon information justifiably relied upon, for reasons of efficacy, public safety or productive law enforcement goals. Id. at 40-41.

Additional considerations to be weighed are whether:

a) there are adequate warnings issued in advance to avoid frightening individuals who confront the road block.

b) there is a perceived need to deter a particular defendant or the commission of certain offenses, i.e., driving while under the influence of alcohol.

c) procedures were established, by the officers acting to intercept vehicles, to insure that the actions would be committed in a neutral manner.

Procedures should comply with recommended standards as set forth below:

a) when traffic volume is light, all vehicles should be stopped and checked.

b) when traffic volume is medium, every fifth or tenth vehicle should be stopped and checked.

c) When traffic volume is heavy, vehicle checks should not be conducted.

It should be noted that the Court in Kirk found that considerations such as those above had not been established. That case involved a road side sobriety checkpoint set up by only two state troopers who had acted spontaneously with planning, without supervisory authority, and without any specificity as to established procedures and methods.

2. Motor Vehicle or Criminal Violations as a Basis for Motor Vehicle Stops

Pursuant to the Prouse holding, vehicles should be stopped when there is "at least an articulable and reasonable suspicion" that the vehicle, or an occupant, is subject to a motor vehicle summons, a warning, or an arrest for any other violation of the law.

The guidelines for motor vehicle stops, originally adopted on September 27, 1979 by the County Prosecutor's Association of New Jersey, set forth the following two examples as permissible basis upon which the police may act to make a motor vehicle stop.

a) if a driver committed a violation of the law prior to the stop as observed by the officer, or

b) the vehicle or its occupants match the description of those wanted in connection with a crime. State v. Anderson, 190 N.J. Super. 340 (App. Div. 1985).

3. Investigative Stops of Vehicles

Frequently, an officer's action stopping a motor vehicle is justified on the basis of his law enforcement obligation or need to conduct a legitimate investigative stop. The Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968) held that an officer has a right to conduct a limited detention of an individual, and even an outer search of an individual's person when he observes a person to be engaging in unusual conduct. That conduct must be of a type which leads an officer reasonably "to conclude in light of his experience that criminal activity may be afoot and the person or persons with whom he is dealing is armed." The officer's belief

that an individual is armed or dangerous may be based upon observations such as the following:

a) an exchange of money or narcotics between individuals in a high crime area, State v.Alexander, 191 N.J. Super. 573, 576 (App. Div. 1983);

b) an occupant of the vehicle is known by the officer to be wanted for a violation of the law.

Such knowledge of an individual officer need not be personal. The officer's acts may be based upon an informant's tips. Adams v. Williams, 407 U.S. 143 (1972), State v. Anderson, 198 N.J. Super. 340 (App. Div. 1985).

The length of such investigative stops is not limited by any rule. The issue appears to be whether the police officer diligently pursued a means of investigation likely to confirm or dispel his suspicion quickly and in a reasonable manner. U.S. v. Sharpe, 105 S.Ct. 1568 (1985). The stop and frisk analysis set forth in the Terry decision initially addressed the issue of permissible investigative stops in the context of a pedestrian situation. That decision has been extended to apply to motorists as well as pedestrians in New Jersey. Motor vehicle stops may therefore be justified on the basis of a need to conduct a Terry investigative stop.

The Supreme Court has again addressed the issue of whether an officer who conducts a Terry investigatory stop of defendant's vehicle may conduct a protective pat-down afterwards. In State v. Thomas, 110 N.J. 673 (1988), a police officer conducted an investigatory stop of the defendant. He was acting upon information provided by an informant that the defendant was in

possession of an unidentified illegal drug. The Supreme Court stated that the protective pat-down was not justified. The defendant, Thomas, was not suspected of a violent crime or violent criminal activity. The information provided by the informant did not indicate that the defendant was armed. The Court noted the lack of any evidence that Thomas was a cocaine dealer or a substantial dealer in narcotics. The Court also focused on the fact that the record was devoid of any indication that the search occurred in a high crime area known for drug dealing. The Court finally concluded the standard that must be met is that there must be a "specific and particularized basis for an objectively reasonable suspicion that the defendant was armed and dangerous." Id. at 685.

Officers must be certain to point to particular and specific facts that lead them to believe or reasonably infer that the individual is armed. The facts must be observed by the officer prior to conducting a protective pat-down. If the objective basis is not established beforehand, any evidence seized as a result of such a pat-down will be most probably suppressed. To establish such an objective basis the officer may cite the following factors:

a) knowledge of criminal activity, reported or observed

b) evidence of narcotic activity

c) knowledge of the high crime in the area

d) physical indication of weapons

e) furtive movement observed

4. Summary Inquiries and Detentions

Pursuant to Prouse, if there is a "reasonable suspicion" that the driver or occupant of a vehicle is violating the law, or wanted in connection with any violation of the law, the vehicle may be stopped and the suspicion investigated. Additionally, if the officer observes what he perceives to be unusual activity or evidence which he connects with a suspicion that a violation of the law is occurring, he may stop a motor vehicle. In such instances, the individual officer may stop the vehicle and conduct a brief and limited investigation without undue delay. Examples of such justifiable bases for stops are:

a) the officer observes a vehicle with body damage which indicates involvement in a recent accident.

b) the officer observes a vehicle driven by a person who appears too young to be licensed.

c) the officer observes a vehicle with a trunk lock punched out, or a missing vent window, or some similar indication that the vehicle may have been stolen.

d) the officer observes individuals in a vehicle who appear to be casing a housing development.

2. DOCUMENTATION OF MOTOR VEHICLE

Some officers do not issue a summons for initially observed motor vehicle violations, if the driver is subsequently arrested and charged for another criminal violation discovered after the stop. The issuance of the summons is highly recommended. The summons becomes a documentation of the officer's probable cause for the initial stop. This practice makes it much easier to prove the legitimate basis for the motor vehicle violation, or there is a reasonable suspicion of a violation, that stop can be documented by issuing:

a) a summons

b) a written warning

c) a verbal warning and documenting the warning in a patrol log or in a permanent notebook kept by the officer.

If the stop involves a criminal violation, or there is a reasonable suspicion of the same, the reason for that motor vehicle stop can be documented by notation in:

a) the investigation report

b) the arrest report

c) in a patrol log or permanent notebook (in the case of suspicion, by a verbal warning and the documentation of that warning).

CONCLUSION

Motor vehicle stops may not be conducted randomly. Motor vehicle stops should be conducted pursuant to established guidelines and under the supervision or authority of a senior officer. Attached are examples of such guidelines. (See Exhibits A and B). Motor vehicle stops will also be justified on the limited basis of observed motor vehicle violations, Terry investigative stops, and brief detentions based upon the reasonable supervision of criminal activity. Thorough documentation of the initial cause or justification of the stop is recommended.

ENFORCEMENT OF DRUG PARAPHERNALIA ACT

Assistant Prosecutor Frank J. Hughes, Jr. and
Assistant Prosecutor Martin C. Mooney, Sr.
Burlington County Prosecutor's Office

The guidelines which are set forth in the following materials were promulgated by the Attorney General at the direction of the Governor when initially presented to the Legislature in September of 1980. These guidelines were cited with approval in the Supreme Court's opinion of Town Tobacconist v. Kimmelman, 94 N.J. 85 (1983). In that opinion, the Supreme Court upheld the constitutionality of the Drug Paraphernalia Act.[1] In his opinion for the Court, Chief Justice Wilentz said these guidelines represent the State's commitment to a fair and evenhanded enforcement of this Act and that, coupled with the basic constitutionality of the Act, serve to ensure against any danger of arbitrary and discriminatory enforcement. These guidelines limit prosecutions under various sections of this Act to the Attorney General or the County Prosecutor only, and set forth specific enforcement criteria and procedures to be followed in undertaking such a prosecution.

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[1] In July, 1987, the Comprehensive Drug Reform Act of 1986 (L. 1987, c.106) created Chapter 36 of Title 2C and transferred, nearly verbatim, the Drug Paraphernalia Act (L. 1980, c.133, N.J.S.A. 24:21-46 to 53) to Chapter 36. Thus, the Guidelines promulgated by the Attorney General governing the prosecution and enforcement of drug paraphernalia cases should be deemed to apply with full force and effect to the newly reclassified provisions of the penal law. N.J.S.A. 2C:36-1 to 9.

Additionally, in a letter of July 20, 1983 to all County Prosecutors, Deputy Attorney General Richard T. Carley, in commenting on this case, stated that the Supreme Court's opinion in Town Tobacconist v. Kimmelman should be taken as a clear signal for Prosecutors to utilize and enforce the Drug Paraphernalia Act. Thus, it would appear that the guidelines setting forth the enforcement criteria of the Drug Paraphernalia Act have been adopted both by the Division of Criminal Justice and by the Supreme Court as important safeguards in the fair enforcement of the law.

These guidelines were promulgated by the Attorney General pursuant to the authority of the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97, et seq., and shall govern the conduct of all law enforcement officers in the State.

JURISDICTION

A. N.J.S.A. 2C:36-2 (L. 1987, c.106(2), §2), prohibiting unlawful use or possession with intent to use, may be enforced by any officer otherwise empowered to enforce the criminal laws of this State.

B. N.J.S.A. 2C:36-3(s), prohibiting distribution, possession with intent to distribute, or manufacturing, may be enforced only by the County Prosecutor or the Attorney General.

1. Any county or municipal law enforcement officer having knowledge of a possible violation of N.J.S.A. 2C:36-3 or 5 shall report same to the County Prosecutor, but take no further action except at the express direction of the Prosecutor.

2. Any state law enforcement officer having knowledge of a possible violation of N.J.S.A. 2C:36-3 or 5 shall report the same to the County Prosecutor or the Director of the Division of Criminal Justice, but take no further action except at the express direction of the Prosecutor.

C. N.J.S.A. 2C:36-4 - prohibiting advertising for the purpose of promoting sale, may be enforced only by the Attorney General.

1. Any county or municipal law enforcement officer having knowledge of a possible violation of Section 4 of the Act shall report the same to the County Prosecutor, but take no further action. The Prosecutor, in turn, shall forward such report to the Director of the Division of Criminal Justice.

2. Any state law enforcement officer having knowledge of a possible violation of Section 4 of the Act shall report the same to the Director of the Division of Criminal Justice, but take no further action.

D. N.J.S.A. 2C:36-6 - concerning hypodermic syringes, hypodermic needles and other injection instruments, may be enforced by an officer otherwise empowered to enforce the criminal laws of this State.

ENFORCEMENT CRITERIA AND PROCEDURES

A. Use or Possession with Intent to Use - No proceeding for use or possession with intent to use in violation of N.J.S.A. 2C:36-2 may be instituted unless the object giving rise to the violation is found in close proximity to a controlled dangerous

substance, residue of a controlled dangerous substance is found on the object, or the person in possession of the object admits that it was used or intended to be used for a prohibited purpose.

B. Distribution or Possession with Intent to Distribute

1. No prosecution may be instituted under N.J.S.A. 2C:36-3 or 5 on the basis of any objects, for example, cigarette papers, alligator clips, etc., which are commonly used for lawful purposes and are merely adaptable for use as drug paraphernalia.

2. Prior to instituting criminal proceedings under N.J.S.A. 2C:36-3 or 5, the County Prosecutor or Attorney General shall give due consideration to the employment of other devices calculated to result in discontinuation of the prohibited conduct, such as:

   a. the issuance of warnings,

   b. the commencement of civil forfeiture proceedings under N.J.S.A. 2C:64-1, et seq.

3. No complaint may be filed or any arrest made for a violation of N.J.S.A. 2C:36-3 or 5 unless the County Prosecutor or Director of the Division of Criminal Justice has determined that there is a reasonable liklihood of conviction. In making such a determination, the Prosecutor or Director shall consider the existence or absence of the evidential factors listed in the second paragraph of Section 1 of the Act, N.J.S.A. 2C:36-1.

4. In cases involving violations of N.J.S.A. 2C:36-3 or 5, no seizure of prohibited objects may be made without a warrant.

a. The affidavit for the warrant shall detail the existence of any evidential factors listed in the second paragraph of N.J.S.A. 2C:36-1.

b. The search warrant shall describe specifically the kinds of paraphernalia to be seized; use of the general term "drug paraphernalia" should be avoided.

c. No application for a search warrant may be presented to a judge until both the affidavit and form of warrant have been reviewed and approved by the Prosecutor or the Director of the Division of Criminal Justice.

d. Search warrant applications shall be made only to judges of the Superior Court.

Warrantless seizures may be made only when clearly necessary to prevent the destruction or removal of evidence, and when approved by the County Prosecutor to the Director of the Division of Criminal Justice.

5. Property seized in conection with enforcement of the Act shall be disposed of as follows:

a. A representative sample of objects sold or possessed for the purpose of sale may be retained for use as evidence until disposition of any criminal proceeding arising out of the seizure.

b. Other contraband or property subject to forfeiture shall be forfeited in a civil action instituted by the prosecuting agency within 30 days of the seizure, notwithstanding any provision of N.J.S.A. 2C:64-1, et seq.

c. Object not included in (a) or (b), but which have potential investigative value, may be retained for this purpose for a reasonable period of time.

d. All other property shall be returned to its owner within 30 days of its seizure.

6. Complaints charging violations of N.J.S.A. 2C:36-3 or 5, whether classified or indictable or disorderly persons

offenses, shall be filed in the Superior Court. The State shall be represented at all stages of the proceedings by an assistant county prosecutor or a deputy attorney general.

C. Violations Involving Hypodermic Syringes, etc. - Arrests and prosecutions for violations of N.J.S.A. 2C:36-6 may be undertaken in the usual manner, unless there is a concurrent violation of another section of the Act.

GUIDELINES FOR USE OF CONFIDENTIAL FUNDS

Assistant Director Ronald D. Sost
Division of Criminal Justice

As a prerequisite for the effective discharge of his obligation as the Chief Law Enforcement Agency of the County, the County Prosecutor should maintain and utilize a confidential source of funds. Such confidential fund source is a necessary tool for the investigation of a myriad of activity including investigation of organized crime, narcotics, and intelligence gathering.

The mission of the Division of Criminal Justice and the County Prosecutors Association, in the preparation of this report, is to attempt to promulgate standardized guidelines for utilization of confidential funds by the respective Prosecutor's offices. The guidelines outlined below are intended only as a minimum standard for the use of confidential funds and where needs indicate more stringent standards can be implemented to conform with office policy. It is understood that all investigative expenses which can be vouchered under normal county procedures without violating the confidentiality of an investigation will be so vouchered.

GENERAL PROVISIONS

1. The operation of the confidential fund, including disbursements of money and the accompanying bookkeeping procedures, may be delegated to a specific section within the Prosecutor's Office.

2. The confidential fund will be subject to internal audit by the Prosecutor, and to external audit by the Division of Criminal Justice at a minimum of once a year. This Division of Criminal Justice review may include review of other office cash accounts such as petty cash, extradition accounts, as well as procedures for handling confiscated monies.

3. These guidelines would supersede any expenditure provisions promulgated by any of the respective County Governments.

AUTHORIZED EXPENDITURES

1. PAYMENT OF CONFIDENTIAL INFORMANTS

COMMENTARY: Payment of money from the confidential fund would be authorized to be made to confidential informants for undercover operations performed by them and/or for receipts of any confidential information from such informants.

2. EXPENDITURES FOR THE DEVELOPMENT AND MAINTENANCE OF SOURCES OF INTELLIGENCE

COMMENTARY: It is recognized that an effective law enforcement agency must maintain access to a confluence of information. Much of such information will be received from individuals who are not criminal participants. Such individuals would include bartenders, waitresses, and a variety of other citizens. In order to develop these sources of intelligence, it may be necessary that money be expended to contact and develop such sources or information. Such expenditures may, for example, include payment for food, beverages and other miscellaneous expenses that are necessary and proper to continue the development of such sources of information. Such payments of money, within budgetary and time restrictions, should have prior approval.

3. PURCHASE OF EVIDENTIARY ITEMS TO AID IN THE DEVELOPMENT OF CRIMINAL INVESTIGATIONS

COMMENTARY: Expenditures encompassed within this category would include, for example, the payments for the purchase of narcotics, stolen property, and other types of evidentiary items that are necessary in the development of a criminal investigation.

4. PAYMENT OF EXPENSES OF COVERT OPERATIONS THAT CANNOT BE PAID THROUGH NORMAL FISCAL CHANNELS WITHOUT COMPROMISING OPERATIONS

COMMENTARY: Expenditures from this category would include, for example, undercover operations, "sting" operations, car rentals, witness security, gambling, and other types of expenditures that could not be vouchered through County Government without compromising the covert operation.

5. PAYMENT OF EXPENSES OF INVESTIGATORS ENGAGED IN AUTHORIZED SURVEILLANCE ACTIVITY

COMMENTARY: During the course of general surveillance activity or of selective surveillance activity of known or suspected organized crime figures and/or other criminal participants, it is recognized that the investigator may have to expend money during the course of the aforementioned surveillance activity. The County Prosecutor may approve payment of expenses related to other emergent investigations. The County Prosecutor's Office may also incur expenses while conducting surveillance at the request of other law enforcement agencies. Such expenditures should be made from the confidential fund to insure that such surveillance activity is not compromised.

ACCOUNTING

All requests for expenditures from the confidential fund should be approved in advance by the Prosecutor, the First Assistant Prosecutor or the Section Chief of the section maintaining the fund or his designee.

Confidential Fund Expense Voucher (CFV 1) will be used for every request made. No disbursement from the confidential account will be made without this form. When funds are advanced from the confidential account, the recipient must report back on the Confidential Fund Expense Voucher (CFV 1), the expenditure of the funds. All funds not expended would be returned at that time.

In accordance with accepted disbursement procedure, there will be a separation of duties as follow:

A. Authorization of Expenditures (Hereinafter referred to as ("Approving Authority")

   1. The County Prosecutor, the First Assistant Prosecutor or the Section Chief of the section maintaining the fund or his designee.

B. Distribution of Cash (Hereinafter referred to as "Disbursing Agent/Recordkeeper")

   1. The Prosecutor or member of his staff designated to sign the checks or distribute the case and maintain the records.

A complete set of accounting records will be maintained by the "Disbursing Agent/Recordkeeper" in support of the confidential account utilized for the funds.

The records will consist of the following as a minimum:

A. General Cash Receipt/Cash Disbursement Journal (see attached) Form CR/CD used to record cash draws from the County Treasurer's Office, as well as any adjustments to the fund. This journal will also be used to record all approved disbursements from the confidential fund. The journal will list the following:

   1. Date of Transaction
   2. Cash Disbursement or Cash Receipt; and Expense Voucher or Incoming Check Number
   3. Receipts
   4. Disbursements
   5. Balance
   6. Operations Expenditures

      a. Confidential Informant
      b. Development and Maintenance of Intelligence Sources
      c. Purchase of Evidence
      d. Covert Operations
      e. Surveillance Activities
      f. Other

7. Remarks

B. Standard Accounting Balance Sheet

The General Cash Receipt/Cash Disbursement Journal and a standard balance sheet will be the minimum accounting record. However, the individual Prosecutor's Office can expand upon the above system as needs indicate.

The accounting records will be balanced at the end of each month and a summary report will be submitted to the "Prosecutor." Request for replenishment of the fund will be made through the County Treasurer's Office whenever necessary.

Selective audits may be conducted at the direction of the Prosecutor by an individual designated by the Prosecutor.

CONFIDENTIAL FUND EXPENSE REQUEST PROCEDURES

1. The person requesting funds will use the Confidential Fund Expense Voucher prepared in duplicate (Form CFV 1) whenever any request is made (see attached Form CFV 1).
2. Form CFV 1 will be presented first to the "Approving Authority" for approval, after which it will be submitted for payment by the requesting individual to the "Disbursing Agent/Recordkeeping."
3. Upon payment of monies requested, the "Disbursing Agent/Recordkeeper" will retain a copy of the voucher (Form CFV L) and will maintain a complete set of accounting records of which the original voucher will become a part.

4. When using a confidential informant for the purchase of information or evidence, and funds are being paid out directly to that individual, Form CFV 2 (see attached) will also be required in addition to Form CFV 1.[1]

[1]The Form CFV 2 is maintained by the "Authorizer Agent" for the purpose of assuring the integrity of the system. The CFV 2 would be the backup documentation to the Form CFV 1 which would be made part of the confidential funds supporting records but would not necessarily indicate the identity of the particular informant. The informant's signature on the CFV 2 can be waived by the "Authorizing Agent." When he/she determines that the confidential operation would be jeopardized in securing the informants' signature.

DIVISION OF CRIMINAL JUSTICE

CONFIDENTIAL FUND EXPENSE VOUCHER

VOUCHER/EXPENDITURE NO:_____ DATE:_____

ST. OF NEW JERSEY VS:_____ CASE OR FILE #_____
(IF APPLICABLE)

AMOUNT REQUESTED OR EXPENSES INCURRED:_____ CHECK IF ADVANCE FUNDS_____

REASON OR ITEMIZATION:_____

_____

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FUNDS REQUESTED WILL BE USED IN ACCORDANCE WITH THE ESTABLISHED CONFIDENTIAL FORM GUIDELINES.

REQUESTING OFFICER'S SIGNATURE:_____

APPROVED BY:_____

AMOUNT ACTUALLY EXPENDED_____ AMOUNT RETURNED_____

DATE REPORTED BACK_____ RECEIVED BY_____

SIGNED_____

FORM CFV 1

DIVISION OF CRIMINAL JUSTICE

PAYMENT MADE BY:

_____

INVESTIGATOR'S SIGNATURE

PAYMENT WITNESSED BY: (IF AVAILABLE)

_____

PAYMENT APPROVED BY:

_____

REMARKS:

_____

_____

_____

RECEIPT FOR PURCHASE OF INFORMATION AND/OR EVIDENCE

I CERTIFY I HAVE RECEIVED PAYMENT IN THE AMOUNT OF $_____ FOR

_____

_____

_____

SIGNATURE OF RECIPIENT

_____.

CONFIDENTIAL INFORMANT NO.
(IF APPLICABLE)

_____ _____

DATE TIME

CORRESPONDING VOUCHER NO. _____

FORM: CFV 2

GENERAL CASH RECEIPT/CASH DISBURSEMENT JOURNAL

FORM: CFV 2

1 DATE	2 CASH DISBURSEMENT-REQUESTING OFFICER CASH RECEIPTS-SOURCE	3 RECEIPTS (+)	4 DISBURSE (-)	5 BALANCE	6 CONFIDENTIAL INFORMANT

6a	6b	6c	6d	6e	7
DEVLPTMNT & MAINT. SOURCES	PURCHASE INTEL	COVERT EVID.	SURVEILLANCE OPERATIONS	OTHER ACTIVITIES	REMARKS

GUIDELINES AND PROCEDURES IN HOMICIDE INVESTIGATIONS

Assistant Prosecutor Norman W. Menz, Jr.
Essex County Prosecutor's Office

Homicides and sudden death investigations have always generated intense public interest and received close scrutiny from the media. Additionally, the re-institution of capital punishment has placed greater pressure on homicide investigators and police personnel to properly perform their duties. Therefore, it is imperative that all the investigative agencies involved in homicide and sudden death investigations receive central direction so that each investigation is performed according to coordinated tactics and strategy and so that evidence is collected and preserved according to uniform standards. A lack of clear central direction often results in duplication and confusion of effort causing botched investigations and the frustration of the criminal justice system.

Fortunately, the County Prosecutor is uniquely placed in the scheme of government to provide the central direction needed since he is the chief law enforcement officer in the county and the foremost representative in the county of the executive branch as it relates to criminal law enforcement. State v. Winne, 12, N.J. 152, 166-167 (1953); Town of Kearny v. Ruvoldt, unpub. opin.; Superior Court, Law Division, Hudson County; (dec'd January 10, 1984). This authority confers upon the County Prosecutor the responsibility of providing the central direction needed to pro-

vide uniform standards for the investigation and prosecution of homicide and sudden death investigations. Therefore, it is incumbent upon the County Prosecutor to establish policies, procedures, guidelines and standards for all agencies within his jurisdiction which will become involved in homicide or sudden death investigation. Report and Recommendations of the New Jersey State Commission of Investigation on the Investigations of Sudden Death Cases (1979). The following recommendations are made to foster and facilitate the proper investigation of homicide and sudden death cases.

1. Policy

Each Prosecutor's Office should assume primary responsibility for directing a homicide or sudden death investigation as a matter of policy. Additionally, guidelines, procedures and standards of performance in such investigations should be formulated by the County Prosecutor and communicated to all Prosecutor's personnel and all investigative agencies within the jurisdiction. If these policies, procedures, guidelines and standards are made known to all parties involved in an investigation, it is expected that this will relieve some of the tension and confusion that may result from the involvement of independent agencies.

2. Sudden Death Notification Requirement

When it has been determined that a homicide, suicide or suspicious sudden death (any unnatural death determination) has occurred the initial investigating agency should be instructed to immediately notify the Prosecutor's Office and the office of the county or regional medical examiner. A representative from each

office should then be dispatched to the scene of the incident before removal of the body.

In all cases of non-suspicious sudden death, the County Prosecutor should establish a written system of notification in the form of a sudden death report. This sudden death report should be sent by the local police to the Prosecutor's Office for review by the investigative unit listed in paragraph four below. The sudden death report serves a dual function. It is a back-up in case the Prosecutor is mistakenly not notified of a suspicious sudden death. It also serves to notify the County Prosecutor of a possible pattern of deaths which individually might appear innocent or natural but collectively form a suspicious pattern.

Where death is related to a case of arson or suspected arson the local or county arson squad, or in their absence the New Jersey State Police Arson Unit, should be consulted for its expertise in that field.

3. System of Notification

A uniform system of reporting should be established by each Prosecutor's Office and communicated to all law enforcement agencies in the county. That system should include a central telephone number where the "on call" Prosecutor's investigator can be reached 24 hours a day. When the "on call" Prosecutor's investigator cannot be available at the central telephone number, a paging device should be employed. A log should be kept of all homicide, suicide or sudden suspicious death notifications.

4. The Investigative Unit

Each Prosecutor's Office should establish a specialized unit

of trained and experienced investigative personnel who will be responsible for investigating all sudden deaths occurring within the county. Of course, the size of each Prosecutor's Office and resources available will necessarily dictate the amount of personnel devoted to this task. In any event, at least one Prosecutor's investigator should be "on call" 24 hours a day each day of the year. The "on call" investigator should be required to go to the scene of all homicides, suicides or suspicious deaths. He will be primarily responsible for the investigation from the point of notification onward.

The "on call" investigator should, at least, have access to legal advise from an assistant prosecutor who should also be available on a 24 hour basis. The respective roles of investigator and assistant prosecutor should be defined by the County Prosecutor and made known to all parties.

The Prosecutor's investigative unit should have sufficient personnel to respond to all homicides, suicides or sudden suspicious deaths on a 24 hour basis. Additionally, the "on call" personnel should have the training and equipment for or have access to the appropriate law enforcement aids to investigate these deaths. Such aids include color photographic and fingerprint equipment and other evidence collecting devices. Polygraph examinations should be conducted by fully certified polygraphists in accordance with prevailing professional standards. Again, the amount of resources available to a particular County Prosecutor will dictate whether these services are provided in part or whole by his office or by an outside agency.

5. Investigator's Duties - On Scene

Upon his arrival at the crime scene, the Prosecutor's representative should make his presence known to all personnel at the scene and shall assume responsibility for the investigation. He shall immediately determine and effectuate the security of the body and the integrity of the crime scene. The collection and preservation of all physical and photographic evidence shall be assumed by the "on call" investigator which shall be done following uniform standards and procedures and using the necessary trained personnel. While at the scene the investigator shall also determine that the names and addresses of all witnesses and the names of all law enforcement personnel present have been recorded. When the on scene investigation has been completed, the investigator will release the body to the medical examiner's representative and see to it that all physical evidence previously collected is forwarded for storage or further forensic analysis as appropriate.

The Prosecutor's representative shall make certain that all necessary notifications have been made to all concerned law enforcement agencies. The list of agencies which should be notified include the medical examiner, local homicide detective, evidence technician, local or county arson unit and where appropriate the Major Crime and/or Arson Units of the New Jersey State Police. Additionally, if the identity of the victim is known, the Prosecutor's representative should see to it that the next of kin of the deceased are properly notified by law enforcement personnel in compliance with the Homicide and Sudden Death Survivor

Guidelines.

6. Continuing Investigation

It shall be the responsibility of the "on call" investigator to continue to supervise the process of the follow-up investigation including the interviews of all witnesses and suspects. The Prosecutor's investigator should be present when formal statements are taken from any witness or suspect. If formal statements result from the investigation, the originals of these statements should be retained by the Prosecutor's representative.

An autopsy should be performed in every case of homicide, suicide or suspicious death. The Prosecutor's investigator who has knowledge of the case should attend and the local detective should be encouraged to attend. During the autopsy the Prosecutor's investigator should inform the medical examiner of the pertinent facts of the case and should see to it that any physical evidence recovered during the autopsy is properly marked, preserved and forwarded to a laboratory where necessary. The Prosecutor's investigator will also see to it that sufficient photographs of the body of the victim are taken, preferably in color, before and, where necessary, during the autopsy procedure.

All photographic and physical line-ups involving suspects shall be supervised by the Prosecutor's representative. Under no circumstances should a physical line-up be conducted without consulting the Prosecutor's Office. Whether or not an assistant prosecutor need be present at a line-up procedure should be determined by each County Prosecutor. Line-up procedures should be established in advance and the results of all such procedures

should be accurately recorded.

If a search warrant is necessary, the Prosecutor's investigator shall see to it that all applications are reviewed and approved by an assistant prosecutor before presentation to a court. Where necessary, the assistant prosecutor shall assist the investigators in preparing the search warrant application.

Upon completion of an investigation, the Prosecutor's investigator will be responsible for the coordination and collection of all police reports related to it. A final police report of an investigation shall be completed and filed with the County Prosecutor within ten days of the close of the investigation.

7. The Charging Process

Under no circumstances should a suspect be charged under the criminal homicide statute without the prior approval of the County Prosecutor or his designated assistant. After consulting with the local police agency, the Prosecutor or his assistant will recommend the crime and the degree of the crime to be charged on the criminal complaint.

8. Relations With Medical Examiner

The investigative unit assigned by the County Prosecutor to investigate homicides or sudden suspicious deaths should establish a close working relationship with the office of the county, regional or state medical examiner in its jurisdiction. Information between the medical examiner's office and the County Prosecutor should be co-ordinated and exchanged consistent with the spirit of the State Medical Examiner's Rules & Regulations, N.J.A.C. 13:49-5.1. In no case of homicide, suicide or sudden suspicious death

should the medical examiner's representative authorize removal of a body without consulting the County Prosecutor's representative.

CHILD ABUSE AND NEGLECT CASES

Assistant Prosecutor Debra J. Casadonte
Monmouth County Prosecutor's Office

The detection, investigation, and prosecution of child abusers is an important function of the criminal justice system. Children, by virtue of their age, are unable to protect themselves from abuse. Since they are helpless, outside sources must intervene to protect this class of victims from further abuse.

The need for an independent protector of children was recognized with the establishment of the Division of Youth and Family Services (DYFS) many years ago. Child abuse is a serious crime, and, as such, the abuser needs to be dealt with within the framework of the criminal justice system. Child abuse can take many forms. It can be physical (cruelty and/or neglect), emotional, or sexual. Title 9 of the N.J. Statutes makes abuse, cruelty, or neglect, violations of the law. See N.J.S.A. 9:6-1 et seq. With the recognition that the abuse of a child is as serious, if not more serious, than the abuse of an adult, abusers can be dealt with under the substantive provisions of Title 2C. Specifically, abusers can be prosecuted under N.J.S.A. 2C:12-1(b) Aggravated Assault, N.J.S.A. 2C:14-2 et seq. Aggravated Sexual Assault, N.J.S.A. 2C:14-3 et seq. Criminal Sexual Contact and N.J.S.A. 2C:24-4 Endangering the Welfare of Children.

The Division of Youth and Family Services has by law been given the prime responsibility of investigating abuse situations.

In some instances, the abuse may be dealt with from within the parameters of programs and supervision offered by DYFS. It is clear, however, that the protection of the child or the seriousness of the offense may require vigorous prosecution in the Courts of New Jersey. As such, there must be a system set up between DYFS and its local Prosecutor's Office to enable the most effective prosecution of an abuse.

In 1979, DYFS and the Prosecutors' Association approved a formalized "Policy...concerning the referral and investigation of child abuse and neglect cases." This policy is codified in the N.J. Administrative Code, Title 10, Chapter 129, effective date 10/11/79. All Prosecutor's Offices should be familiar with this policy since it sets forth the procedures and guidelines in determining when DYFS should refer a case to the local Prosecutor's Office for assistance in investigation and prosecution. Since this policy is quite important, it is reprinted in full below:

Prosecutor's Final Revision

Approved 6/5/79

Chapter 129 - Child Abuse and Neglect Cases

Subchapter 1. Policy of the Division of Youth and Family Services and County Prosecutors concerning the referral and investigation of child abuse and neglect cases.

10:129-1.1 - Purpose

(a) State law requires all persons to report suspected cases of child abuse or neglect to the Division of Youth and Family Services "the Division," and the Division has a legal obligation

to refer to County Prosecutors all cases that involve suspected criminal activity on the part of a child's parent, caretaker or any other person. While this duty may result in the referral of a substantial number of cases to Prosecutors, it is anticipated that in most of the cases referred, extensive police involvement will not be warranted, and indeed that in many cases no police involvement will be required. The objectives of this policy statement are:

1. To set forth guidelines by which Division caseworkers may easily identify cases that must be referred to Prosecutors;
2. To establish procedures for such referrals;
3. To establish a system through which Division caseworkers may assist Prosecutors in determining which cases should be investigated and in identifying cases in which criminal investigation or prosecution would be detrimental to the child's best interest; and
4. To establish a framework for liaison and improved communication and cooperation between the Division's district offices and the several Prosecutor's offices in order to further the mutual goals of protecting the child and proper law enforcement.

10:129-1.2 - General Policy

The primary concern of all public agencies involved with child abuse and neglect is to ensure the safety, well-being, and best interests of the child. Other considerations, such as the objective of maintaining family integrity, promoting family

therapy or the concern for traditional "parental rights," are secondary.

10:129-1.3 - Referral of cases to Prosecutor

(a) Caseworkers are obligated to report to the Prosecutor all cases involving suspected criminal conduct on the part of a parent, caretaker or any other person. This obligation will be satisfied if caseworkers refer to the Prosecutor all cases involving any of the following:

1. Death of a child;
2. The subjecting or exposing of a child to unusual or inappropriate sexual activity;
3. Any type of injury or condition resulting in hospitalization or emergency room treatment;
4. Any type of injury or condition that requires more than superficial medical attention (e.g., treatment for broken bone at physician's office);
5. Repeated instances of physical violence committed against a child, or substantially depriving a child of necessary care over a period of time; or
6. Abandonment of a child.

This list shall not be construed to preclude the referral of any other case which, in the judgment of the caseworker and supervisor, warrants review by the Prosecutor.

(b) While several of the criteria set forth above are based solely upon the objective condition of the child, there should also be some reason to believe that the injury or condition was not accidentally caused. For purposes of these guidelines, an

injury is not accidental if an intentional act produces an unintended result. Thus, a parent, caretaker, or any other person who physically disciplines a child may have committed child abuse even though the resulting injury was not intended.

(c) This policy regarding referral applies whether the child is residing at home or in an institution, school or other residential facility, and whether the person believed to be responsible for the injuries is the child's parent, caretaker or any other person.

(d) The Division's duty to refer a case to the Prosecutor arises as soon as the caseworker has any information about the case which leads him to suspect that the alleged abuse or neglect may have occurred. This means that the child's condition or injury is one of those specified in this policy and the caseworker has reason to believe that the condition or injury was accidentally caused.

1. In some cases, such as where the child is in a hospital and a doctor states his opinion that the condition or injury was probably not accidental, the caseworker will have sufficient information to require a report at a very early stage of the investigation. In other cases, such as where evidence initially supports the claim that the condition or injury was accidentally caused, the duty to report may not arise until a later point when the caseworker has conducted a more extensive investigation.

2. Thus, referral need not be made at the time a report is first received by the Division even if the report provides information to place the case in one of the categories set forth

in this policy. This information should be supported by the belief of the caseworker. This does not mean that the caseworker must have completed an investigation and secured solid evidence of abuse or neglect. Rather, cases falling within these categories must be referred at the point at which the caseworker has some suspicion that the child's condition or injury probably was not accidentally caused.

(e) Prompt referrals of child abuse and neglect cases are important, and in some cases essential. Hence, written referrals on form DYFS 9-7, or other Division of Youth and Family Services form which contains a narrative description of the essential facts, shall be sent to the Prosecutor as soon as the caseworker determines that referral is required by this policy. In cases where there is serious or repeated harm, the referral shall be made as soon as possible by telephone, with written confirmation being sent within 48 hours thereafter. The Division will establish consistent with this policy, specific procedures for making referrals which will include participation of supervisory personnel in identifying cases that this policy requires to be referred and designation of a person in each district office to act as liaison to the Prosecutor. Copies of such procedures will be furnished to all County Prosecutors.

10:129-9.4 - Division recommendations to Prosecutors

(a) When referring a case to the Prosecutor, the caseworker may already have information sufficient to arrive at a preliminary conclusion concerning the need for investigation by a law enforcement agency. This conclusion will be based on the

standards in this policy. A recommendation and underlying reasons therefore will be communicated to the Prosecutor at the time the case is referred.

(b) Recognizing (1) that the caseworker may have already conducted a preliminary investigation of the case, (2) that the caseworker has some experience and expertise enabling him to assess the need for action by the Prosecutor, (3) that in some cases efforts already made to ameliorate the underlying problems may be undermined by the initiation of a police investigation and (4) that the caseworker is also in a position to identify cases in which immediate action by a law enforcement agency is required, the Prosecutor shall give due consideration to the recommendations of the Division. If the Prosecutor determines to investigate a case notwithstanding a contrary recommendation by the Division, he should discuss the matter with the caseworker, his supervisor or the district office liaison before initiating the investigation.

10:129-1.5 - Response by Prosecutors

(a) In order to facilitate communication with the Division and coordinate handling of child abuse and neglect cases, each County Prosecutor will designate an Assistant Prosecutor to serve as liaison to the Division's district office for such cases. The person so designated will be responsible for keeping the Division informed as to the course of action taken by the Prosecutor. In addition, and to the extent practicable, each prosecutor will delegate to one or several investigators responsibility for conducting all investigations in child abuse and neglect cases.

(b) The Prosecutor may take various courses of action upon receipt of a referral, among them the following:

1. Advise the Division staff member making the referral that the Prosecutor will not undertake an investigation and request that the Prosecutor be advised immediately of any indication of further or continuing abuse or neglect.

2. With advance notice to the Division, undertake an initial investigation using, to the extent practicable, specially designated investigators or refer the matter to a designated officer in a local police department for initial investigation.

(c) After investigating a case, the Prosecutor will determine whether criminal prosecution must be undertaken. He should confer with the caseworker in making this determination and will advise the caseworker of his decision.

While this policy was being followed in theory, it became clear in late 1982 that some Prosecutor's Offices did not have the resources or were not devoting their resources to the investigation and prosecution of child abusers. As a result, a Working Group in Child Abuse and Neglect was formed with members of various County Prosecutor's Offices, the Attorney General's Office, and DYFS in order to recommend and develop uniform policies, forms and procedures concerning the reporting of child abuse cases to Prosecutors and the prosecution thereof. The Working Group recommended that numerous operating standards should be required in every Prosecutor's Office. Therefore, guidelines were recommended so that a framework would be established for "improved communication and cooperation between the District

Offices of DYFS and the County Prosecutor's Offices in order to further the mutual goals of protecting the child and maintaining proper law enforcement."

These minimum standards were adopted by the County Prosecutors' Association on May 24, 1983. They are set forth in full as follows:

"1. Each Prosecutor's Office shall have an Assistant Prosecutor assigned to be available to coordinate or supervise the investigation of all child abuse cases, be a liaison between the Prosecutor's Office and DYFS and present the case to the Grand Jury if warranted.

2. Each Prosecutor's Office shall have an investigator available twenty-four hours a day, seven days a week, who has the training and ability to coordinate and/or conduct a meaningful investigation into all reported cases of child abuse (physical, sexual and psychological) and prepare the case for possible presentation to the Grand Jury.

3. Each Prosecutor's Office shall adopt and comply with the Uniform Reporting System requirements for case referral and reports of final disposition."

Of course, minimum standards are only a beginning. The protection of children and prosecution of abusers is such an important duty that the Working Group recommended "optimum standards" for "larger counties with a higher incidence of child abuse and neglect." These optimum standards are set forth in full as follows:

"1. Each Prosecutor's Office should have at least a male and female investigator properly trained and assigned to conduct child abuse and neglect investigations.

2. Each Prosecutor's Office should incorporate all forms of child abuse and neglect investigations (i.e., physical, sexual and psychological) into one unit.

3. Each Prosecutor's Office should ensure that qualified personnel are available to provide technical assistance to DYFS when appropriate. (e.g., photograph, evidence collection, etc.)

4. Each Prosecutor's Office should facilitate cooperation between DYFS and local police departments, perform joint investigations with DYFS when appropriate and be available for case consultation on complex matter."

Since the protection of our children involves a joint effort by DYFS and the County Prosecutors, it is necessary that the prosecutors share information concerning cases referred by DYFS under N.J.A.C. 10:129-1.3.

Initially, it should be noted that a referral may come to a Prosecutor's Office by form or telephone. Any referral by DYFS to a Prosecutor's Office is now on a standardized Agency form. The Prosecutor's Office, on a telephonic referral of a serious child abuse, should record the report. The Working Group recommended a "preliminary report" form for telephonic interviews. It is attached hereto as Appendix 1. Every Prosecutor's Office may have their own investigative referral form. While these can be used, it is suggested that the information on the approval form be incorporated therein.

Furthermore, the Prosecutor's Office should notify DYFS of actions taken on particular cases which were referred to DYFS under the Administrative Code. This can also be done by form and the one approved by the Prosecutors' Association is attached hereto as Appendix 2.

As previously recognized, there are some child abuse cases which need not be prosecuted in the Courts if the abuse is "borderline" serious and the abuser avails himself of the services of DYFS. The Working Group Committee on Child Abuse and Neglect recognized that there are "situations in which indictment and prosecution are not warranted provided that the family cooperates with DYFS. . ." In these situations, it is necessary that the Prosecutor's Office monitor the progress of the "abuser" for a period of time while letting the "abuser" know he is being monitored. For this situation, a form letter is sent to the family notifying them of the Prosecutor's interest and urging their cooperation with the Service Plan of DYFS." (Appendix 3)

It is clear that the successful investigation and prosecution of child abusers relies in part on the interaction between DYFS and the local law enforcement agency, either the police department and/or the Prosecutor's Office. This interaction is successful if communication is shared. It is also successful if training between both levels occurs on a continuing basis. A series of meetings and/or training seminars to accomplish this goal are recommended. It is set forth in full as follows:

"1. Regional management meetings between key DYFS and law enforcement officials, designed to enhance communications and

improve working relationships;

2. County meetings between local DYFS and law enforcement staff, designed to develop an agreement for coordinated multidiscipline interventions; and

3. In-service training for DYFS and law enforcement staff, designed to enhance services provided to clients and to assist workers in understanding the complementary roles of helping and investigating."

Prosecutor's Offices should take the lead and set up local programs or meetings where applicable.

Obviously, as in any case, the successful investigation and prosecution of a child abuser depends upon the pretrial process. In the Courtroom, the State must prove a defendant's guilt "beyond a reasonable doubt." This standard does not change because the prime witness is a child. If anything, it makes the conviction harder to obtain. Therefore, the pretrial process must compensate. The above processes, recommendations, and procedures seek to ensure successful prosecution through the effort of DYFS and law enforcement agencies.

POLICE DEPARTMENT
MONMOUTH COUNTY UNIFORM REPORT SYSTEM

0. AGENCY: Monmouth County Prosecutor's Office

Preliminary R

1. Section	2. Unit	3. Origin	4. Assist	21. Prosecutor's Case Number	22.

5. Crime/Incident	23. Victim/s/ SS No.	24. Age	25. Sex	26
	1.			
	2.			
	3.			

6. NJS	27. Victim/s/ Home Address	Phone
	1.	
	2.	
	3.	

7. Between	8. Hour	9. Day	10. Mo.	11. Date	12. Yr.	28. Employer	Phone
						1.	
At						2.	
13. Crime/Incident Location						3.	

14. Municipality	15. County	16. Other Assist	29. Person Reporting Crime/Incident	30. Date and Time

17. Type of Premises	18. Code	19. Weapons - Tools	20. Code	31. Address	Phone

32. Method of Operation **Synopsis**

33. Vehicle	34. Year	35. Make	36. Body Type	37. Color	38. Registration Number & State	39. Serial Number or Identification

VALUE STOLEN PROPERTY	40. Currency	41. Jewelry	42. Furs	43. Clothing	44. Auto	45. Misc.

46. Total Value Stolen	47. Total Value Recovered	48. Teletype Alarm	49. Technical Services	50. Technician - Agency

List Accused - List and identify Additional Victims - Describe Perpetrators or Suspects - Action Taken Include Findings and Observations of Investigator - Physical Evidence Found - Where By Whom - Disposition and Technical Services Performed - Interview of Victims - Witnesses - Persons Contacted - Accused Suspects - List - Describe Stolen Property Value - Court Action - Attach Statements.

51. No. of Accused	52. Adult	53. Juvenile	54. Date Report	55. Date Closed	56. Date Revised	57. Sentence

58. Name	Address	SSN	59. Age	60. Sex	61. Race	62. DOB

63. **Course of Action**

64. Name / Signature	65. Priority	66. Assigned To	67. Target Date	68. Chief/Date
	Appendix I	69. Supervisor	70. A/P Assigned	71. SCA/Date

Re: Investigation No.:

Crime Incident:

Date:

Victim:

Target:

This letter is to inform you that our investigation in the above matter which was referred to us by your office has been completed by the Monmouth County Prosecutor's Office.

Please be advised that the result of that investigation has been reviewed by Captain O'Connor and myself. It is our opinion that the facts as developed in the investigation do not warrant the filing of a criminal charge at this time. We have therefore closed our case file.

If you have any questions, please contact me at 431-6468.

Thank you for your continued cooperation.

Very truly yours,

JOHN KAYE
MONMOUTH COUNTY PROSECUTOR

By: Debra J. Casadonte
Assistant Prosecutor

DJC:gr

OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF MONMOUTH
FREEHOLD, NEW JERSEY 07728-1261
(201) 431-7160

JOHN KAYE
MONMOUTH COUNTY PROSECUTOR

ALTON D. KENNEY
FIRST ASSISTANT PROSECUTO
JAMES FAGEN
DIRECTOR OF TRIAL DIVISION
ROBERT A. HONECKER, JR.
SECOND ASSISTANT PROSECUT
FRANK R. LICITRA
CHIEF OF INVESTIGATIONS

Dear

The Monmouth County Prosecutor's Office has received information regarding allegations of child abuse by you. Subsequent to reviewing reports as supplied by the Division of Youth and Family Services, we will not file any formal charges at this time. However, should this or any allegations similar to the above reoccur, criminal action will be taken.

It is in your best interest to adhere to any recommendations made by the Division of Youth and Family Services in dealing with discipline or any other problems you have with your child.

Very truly yours,

JOHN KAYE
MONMOUTH COUNTY PROSECUTOR

Debra J. Casadonte

By: Debra J. Casadonte
Assistant Prosecutor

DJC:gr

cc: Division of Youth & Family Services

ENVIRONMENTAL PROSECUTIONS

Deputy Attorney General James J. Lyko
Chief, Environmental Prosecutions Task Force
Division of Criminal Justice

The last decade has witnessed a growing popular awakening and response to the problems of water pollution and environmental degradation. With the more recent awareness of shore pollution problems and improper medical waste disposal, this trend has increased significantly to the point where today in New Jersey pollution and the environment are viewed as priority concerns by the general population. Although this awareness and concern is, in general, a response to conditions rooted in decades of improper waste disposal practices, New Jersey statutes and regulations impose an obligation upon the law enforcement community to join the effort to see that hazardous waste and other pollutants being generated today are being disposed of properly.

For almost a decade, the Division of Criminal Justice has maintained an investigative unit whose primary responsibility is the investigation and prosecution of the illegal transportation, storage, and disposal of hazardous waste and the illegal transportation, storage, and disposal of hazardous waste and the illegal discharge of pollutants. Currently known as the Environmental Prosecutions Task Force, this unit is comprised of approximately twenty State Investigators and ten Deputy Attorneys General. The Section is currently supervised by Section Chief James J. Lyko at telephone number (609) 984-4470, Supervising

State Investigator Vincent A. Matulewich, at telephone number (609) 984-2737 and Supervising State Investigator Wayne H. Smith, at telephone number (609) 984-2737. The unit has, or has access to, state of the art safety and testing equipment. This unit has rendered advice and assistance to numerous law enforcement agencies throughout the country, and continues to be at the forefront of the national enforcement effort.

In 1980, in response to the interstate activities of the hazardous waste violator, the Attorneys General of the Northeastern States initiated a project known as the Northeast Hazardous Waste Project. Originally comprised of the eleven states in the northeast corridor from Maryland to Maine, including Pennsylvania, the Project has recently been expanded to include the States of Ohio, Virginia and West Virginia. The staff of the Project is located in the offices of the Division of Criminal Justice in Trenton. There are four principal purposes of the Northeast Hazardous Waste Project, namely, to promote and facilitate coordinated investigations between the member states, to provide technical assistance, to sponsor basic and advanced hazardous waste training programs, and finally, and most significantly, to provide an information bank for all public record information with respect to the various components of the hazardous waste disposal industry. This information includes licenses and registrations, delicensing, indictments, civil suits, and administrative violations. Staff members of the Environmental Prosecutions Task Force are actively involved in the informational network and training programs of the Northeast Project. The

County Prosecutors can access this system on an ad hoc basis through the Environmental Prosecutions Task Force. In this way, should any County Prosecutor need information about suspected environmental violations in any New England State or in any mid-Atlantic State (as far south as Virginia and West Virginia and as far west as Ohio), the Northeast Project can be accessed for this purpose.

In response to the mutual requests of the County Prosecutors Association and the Director of the New Jersey Division of Criminal Justice, the Environmental Prosecutions Task Force held a week long training course in July of 1982 in which at least one Assistant Prosecutor and one County Investigator from each of the twenty-one County Prosecutors' Offices were trained in the investigation and prosecution of hazardous waste cases. Following this initial training course, several of the County Prosecutors temporarily assigned representatives of their investigative or legal staffs to work on the job with Environmental Prosecutions for periods of up to six months. Although the goal was to give these individuals the best possible on the job training experience, attempts were made to focus their activities on investigations which related to their respective Counties. Although there are currently no representatives of the County Prosecutor's Offices assigned to work full time at the Division, this opportunity is always available. In addition to the week long training course, Environmental Prosecutions has sponsored day long courses dealing with an analysis of the controlling administrative regulations, and dealing with hands-on

investigative techniques peculiar to the investigation of hazardous waste cases. The Division is always receptive to requests from any County Prosecutor to present specialized training in environmental law enforcement matters.

As a result of the formal training courses and the on-the-job training experience, several of the County Prosecutor's Offices have formed and are operating full time hazardous waste investigation and prosecution units. Although the existence of a full time unit may not prove feasible in the smaller counties, it is recommended that each of the County Prosecutors designate a specific Assistant Prosecutor and County Investigator who will be trained and generally available to investigate these cases. This recommendation is made in light of the complexities inherent in hazardous waste investigations, peculiar investigative techniques, and the need to develop a general sensitivity to the potential dangers inherent in dealing with hazardous wastes.

Although the Division of Criminal Justice makes every attempt to handle as many of these cases as possible, the sheer weight of numbers periodically requires that the Environmental Prosecutions Task Force forward leads and/or cases to the County Prosecutors for initial response and investigation. This assistance provides the Division with the opportunity to concentrate on multi-county conspiracies, the more complex disposal schemes, and organized crime related activities. Although these investigative leads and cases are forwarded to the County Prosecutors, it should be understood that the Division stands ready to provide the County Prosecutors with whatever assistance they deem necessary. As in

the past, this assistance has included investigative response teams, specialized sampling equipment, sampling teams, chemical analysis, technical and legal advice, expert witnesses, and the like. It is expected and understood that the response capabilities of the various County Prosecutor's Offices will differ dramatically. Those offices having a high volume of investigative activity will be able to handle the more routine cases without assistance from the Division. On the other hand, those offices that have previously witnessed little or no investigative activity may find themselves sufficiently uncertain of their capabilities to request Division assistance at the earliest stages. Although the Division will routinely assist in these cases, it is recommended that the County Prosecutor assign their designated Assistant Prosecutor and County Investigator to work side by side with the Division personnel to provide the county personnel with a hands-on training experience.

During the course of these investigations, County Prosecutor's personnel may have to deal with the New Jersey Department of Environmental Protection. In order to assist in these dealings, Environmental Prosecutions has recently secured the designation of an individual within the Department who will serve as liaison between the respective Prosecutor's Offices and the Department of Environmental Protection. This individual is Jerry Burke, Director, Division of Regulatory Affairs, at telephone number (609) 292-9003. In his absence the designated individual is George Schlosser, Assistant Director, Division of Regulatory Affairs, at telephone number (609) 292-9003. In those

instances in which the Prosecutors' personnel know the identity of the particular division, section, or person with which they wish to deal, they are, nonetheless, strongly urged to copy the designated liaison person with their written communications. This will provide the liaison with the opportunity to advise them of others within the Department who may have relevant information.

Since all hazardous waste that is the subject of an investigation or prosecution may ultimately be cleaned up pursuant to the Federal Superfund or State Spill Fund cleanup programs, arrangements can sometimes be made on an ad hoc basis with the Department of Environmental Protection to provide a sampling team and to do the necessary chemical analysis of any samples taken for the County Prosecutors. In order to avail themselves of this general protocol, it is nonetheless necessary that their sampling requests be made to and discussed with Supervising State Investigator Vincent Matulewich of the Environmental Prosecutions Task Force. This requirement is imposed by the Department of Environmental Protection with an eye towards evaluating the nature, extent and merits of the sampling request. It is imperative that these requests be made with as much advance notice as the circumstances permit. This will provide the Department of Environmental Protection with sufficient lead time to make the necessary manpower assignments.

Should any County Prosecutor desire, efforts will be made to circulate form indictments, computer printouts, and other information of general or specific interest to those investigating and prosecuting hazardous waste or other environmental cases.

Environmental Prosecutions is on line with the Department of Environmental Protection's computer. This can provide the County Prosecutors, through the Environmental Prosecutions Task Force, with direct access to available computerized information, such as data from the hazardous waste manifests, the shipping documents that must accompany every hazardous waste shipment. Again, it is important that each of the County Prosecutors designate an Investigator and an Assistant Prosecutor with their office to receive this information and act as liaison with Environmental Prosecutions Task Force.

As a part of the Division's comprehensive response to the hazardous waste problem, one day awareness seminars were designed by representatives of Environmental Prosecutions and presented by it under the sponsorship of the County Prosecutors. The thrust of these one day hazardous waste awareness seminars is to provide a general awareness and sensitivity to the law enforcement and regulatory personnel within each of our local communities. It is the local police, building inspector, fire inspector, health inspector, and code enforcement officer, whose day to day responsibilities take them in and about the buildings and streets of their respective towns while in the performance of their official duties.

The Environmental Prosecutions Task Force, through its Marine Pollution Unit, has attempted to coordinate the activities of local agencies responding to the burgeoning instances of trash wash-ups on New Jersey beaches. All county and municipal agencies that experience beach-fouling episodes have been asked to retain

any items of potential evidential value and to report those items to Environmental Prosecutions at (609) 984-4470. In this way, the source of such items can be investigated to determine whether it is the result of the type of deliberate or systematic conduct that should be prosecuted.

Since the operation of the hazardous waste disposal industry and the current hazardous waste criminal statutes are still a relatively new phenomenon, the following additional comments may be useful.

Hazardous waste is the unwanted byproduct of the production of goods and services that the consuming public demands. It is, in general, waste that is either toxic, corrosive, ignitable, reactive or otherwise designated as hazardous by list or process. Generators of more than 220 pounds of hazardous waste per month are required to be registered with the Federal Environmental Protection Agency and the New Jersey Department of Environmental Protection. All generators of such waste are required to see that it is disposed of at a Department of Environmental Protection/Environmental Protection Agency licensed facility, authorized to accept a particular type of waste. In New Jersey, waste oil is classified as a hazardous waste and must be directed to a waste oil hazardous waste facility. The movement of the hazardous waste from the generator's plant site or establishment via an Environmental Protection Agency/Department of Environmental Protection Agency licensed transporter to a Department of Environmental Protection/Environmental Protection Agency licensed facility must be accompanied through the entire transit process by

a shipping document known as a Hazardous Waste Manifest, copies of which must be timely filed by both the generator and the facility with the State Department of Environmental Protection. Simply put, hazardous waste can be at the site of generation, a hazardous waste facility, or in transit thereto, and this movement must be accompanied by a manifest.

Since 1978 the law enforcement community has witnessed the enactment of several criminal statutes designed to enable prosecutors to investigate and prosecute cases involving water pollution and the illegal transportation, storage or disposal of hazardous waste. For example, a generator who dumps hazardous waste or toxic pollutants into the fields, waterways, or sewers on or adjacent to his plant site; or a transporter who dumps it onto a roadway, field, or stream, or abandons it on a farm or in a warehouse; or if a facility does any of the same or similar types of disposal activity, each of them can be indicted for the unlawful release or abandonment of a hazardous waste or toxic pollutant, under N.J.S.A. 2C:17-2(a), a second degree crime. Note that this section is broad enough to support a prosecution for the similar disposal of a substance which, although not technically a hazardous waste or toxic pollutant, can be otherwise proven to be a harmful or destructive substance. In those situations in which the perpetrator maintains some custody or control over the material so that the elements of "release or abandonment" cannot be proven, and failing in the use of such inchoate crimes as conspiracy, or attempt, the prosecutor should look to Title 13 for a controlling crime.

The Title 13 crimes, namely those contained in N.J.S.A. 13:1E-9(g) and (h), are fact pattern crimes generally designed to track the disposal fact pattern previously discussed, and have five operative subsections. Section (g) and section (h) of the statute have the same identical five subsections. The Section (g) crimes have a culpability requirement of "knowledge" and are third degree crimes, while the Section (h) crimes have a reduced culpability requirement of "recklessness" and are fourth degree crimes.

Section (i) is a strict liability fourth degree crime for failure to use the manifest as required.

The Water Pollution Control Act set forth in N.J.S.A. 58:10A-1 et seq, is a bit more cumbersome to use but does provide a basis for prosecutions in instances in which "a pollutant" has been discharged into the waters of the State of New Jersey or onto lands from which it might flow into the waters of the State of New Jersey. See in particular, Sections 10A-6(a) (proscribed conduct), 10A-3(e) (definition of discharge), and 10A-10(f) (criminal penalty). Note that before the Prosecutor considers a Water Pollution prosecution in a factory or other industrial site discharge context, he should be sure to check with the Department of Environmental Protection to negate the possibility that the discharge is being done pursuant to a permit issued under the Act.

Although at first glance it may appear the N.J.S.A. 2C:17-2(a), the release or abandonment section, would probable apply in most instances in which the Water Pollution Control Act would be

applicable, note that the latter Act is triggered by the discharge of a "pollutant" which need not measure up to the level of a "hazardous waste," "toxic Pollutant," or other "Harmful or destructive substance." Additionally, the Water Pollution Control Act proscribes negligent violations.

ESTABLISHING SPECIALIZED UNITS

Administrative Analyst Marti Moore
Division of Criminal Justice

The organization of the investigative resources of a prosecutor's office is absolutely critical to its effectiveness in detecting, apprehending and convicting offenders against the criminal laws. How to organize investigative resources and whether specialized units are warranted is influenced by a number of significant factors. Foremost among these factors are the policies and priorities of the Prosecutor, the total resources available to the office, the nature and scope of the County's crime problem and the public sentiment.

Given the necessity to maximize the effectiveness of limited resources, it is important that priorities are assigned to the investigative activities of the office. In order to meet the numerous and demanding statutory responsibilities of the office of County Prosecutor, it may be desirable to focus investigative efforts in specific areas in accordance with prosecutorial policy.

There are several options for a prosecutor's office in organizing its complement of investigative staff. While many offices utilize general investigative units and find this to be most effective approach, other offices will desire to establish specialized units to concentrate exclusively on a particular crime problem.

In determining the necessity to establish or maintain a specialized unit, the Prosecutor should conduct a comprehensive assessment of the caseloads and activities of all investigative sections. The results of this study should be utilized to organize and deploy existing investigative resources in the most efficient and effective manner possible, consistent with the priorities established for the office.

It is important that, once organization is determined, the priorities and policies established by the Prosecutor are effectively communicated to all investigative units, and that each specialized unit is provided a clear mandate of its investigative mission. This will help eliminate ambiguity with respect to investigative responsibilities. Establishing priorities also requires a periodic evaluation and assessment of unit and individual caseloads to determine if priorities are being pursued or if a refocusing of investigative priorities is warranted to respond to changing crime problems. Periodic evaluation of each unit's investigative mandate is also advisable.

It is also important that efforts be undertaken to ensure that each unit keeps pace administratively with the increasing sophistication of investigative operations. In other words, antiquated record-keeping procedures that have evolved over the years are no longer adequate to ensure that today's investigations are properly supervised. Effective management of complex or sensitive investigative activities requires adequate procedural controls which enable supervisory staff to maintain oversight of individual workloads and case progress.

Once the Prosecutor has determined what specialized units are needed and the appropriate staffing complements to be assigned to each area, it is recommended that a policy and procedures manual be promulgated for investigative operations. The manual should clearly define the nature and scope of the responsibilities for each investigative section and set forth the chain of command that will govern these sections. It should also outline procedures that are to be followed for case intake and case screening, organization and maintenance of case files, periodic monitoring of case progress and regular reporting of case status. Formal, uniformly applied procedures for the disposition of investigative matters should incorporate proper review by the Prosecutor, the First Assistant or the Chief of Detectives. In order to standardize and streamline investigative operations, forms should be designed and utilized whenever possible. Investigative units should be required to maintain uniform statistics regarding their caseloads, investigative activities and the results of their investigations.

SETTING UP AN ARSON INVESTIGATION UNIT

Assistant Prosecutor Brian D. Gillet
Union County Prosecutor's Office

In response to a growing awareness of the problem of arson in New Jersey, former Governor Brendan T. Byrne in 1979 organized an Arson Task Force to explore the scope and magnitude of the arson problem in New Jersey and to develop a comprehensive statewide strategy for effective arson control. In its report to the Governor, entitled Development of a New Jersey Strategy for Arson Control: The Report of the Arson Task Force, this task force identified certain specific arson-related problems: inadequacy of available data and information on arson, inadequacy of arson investigation and training for New Jersey law enforcement personnel, housing deterioration and abandonment, lack of coordination among agencies, insurance-related factors and others.

Primary among its findings was the lack of clear policies regarding the investigation of arson:

> To begin with, arson is a crime which falls between the bureaucratic cracks. Clearly, it is a law enforcement problem since there are laws against arson and they must be enforced. Unlike other crimes, however, an investigation must take place before it can be established that a crime has actually been committed. Yet fire investigation is generally deemed to be a fire department function and law enforcement officials have neither the expertise nor the desire to investigate fires. Firefighters, on the other hand, are usually not trained

> criminal investigators and know little about interviewing witnesses, collecting evidence and interrogating suspects. This is especially true in New Jersey where 85% of the firefighters are volunteers whose basic role is fire suppression and not fire investigation. Since every arson investigation must necessarily begin with a fire investigation, it is clear that both law enforcement personnel and firefighters must assume some responsibility for dealing with the crime of arson. Unfortunately, it is difficult to establish precisely when a fire investigation becomes an arson investigation and respective responsibilities become blurred. Self-interpretations of roles arise and often begin to serve at cross purposes. This became quite apparent to us during our interviews of policemen and firemen in New Jersey. Few that we talked to could related fixed and clear-cut lines of responsibility and policies regarding arson investigations varied widely from one jurisdiction to another.

TASK FORCE

The Arson Task Force is the foremost management strategy to have evolved to counter the complex crime of arson. The Task Force is a carefully planned strategy for mobilizing public and private resources, for identifying and coordinating responsibilities setting policies and priorities, and for integrating efforts to achieve a coherent anti-arson program.

The County Task Force, under the control and supervision of the Prosecutor, provides the system that allows the inter-disciplinary approach necessary to conduct arson investigations. Fixed responsibility within the Task Force will overcome the jurisdictional quandary which previously plagued arson investigations.

PERSONNEL

Contemporaneously with the preparation of the Task Force Report, Union County established an Arson Investigation Unit premised on the task force concept. With the assistance of an equipment grant from the United States Law Enforcement Assistance Administration and with the cooperation of municipalities throughout the county, this unit became operational on January 1, 1979.

The Arson Unit presently consists of the following personnel:

County	1 Assistant Prosecutor 1 Lieutenant of County Investigators 5 County Investigators
Cranford	1 Lieutenant, Fire Department
Hillside	1 Captain, Fire Department 1 Fire Inspector, Fire Department
Linden	1 Detective Sergeant, Police Department 1 Lieutenant, Fire Department 3 Firefighters, Fire Department
Plainfield	2 Detectives, Police Department 4 Firefighters, Fire Department
Rahway	2 Deputy Chiefs, Fire Department
Roselle	1 Detective, Police Department
Roselle Park	1 Fire Inspector, Fire Department 1 Firefighter, Fire Department
Springfield	1 Fire Officer, Fire Department
Summit	1 Battalion Chief, Fire Department 1 Fire Officer, Fire Department

Union	1 Detective, Police Department 1 Deputy Chief, Fire Department
Union County Police	1 Detective

In addition, as a result of Federal legislation expanding the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms to investigate fires as well as explosions, the unit has attached to it a special agent from the Newark office of the A.T.F.

The arson investigators assigned to the Arson Unit are recruited from local police and fire departments within the county; their participation must be voluntary. The applicant must obtain written approval from his department chief or employer and the City Administrator or Mayor. The municipality must agree to provide injury or liability insurance, allow the investigator to attend a three week Arson Investigation Course sponsored by the Division of Criminal Justice, and authorize his full participation for the periods he is "on-call," involved in on-scene or follow-up investigations, court appearances and training sessions. The applicant receives no compensation from the county; any compensation received is from his own municipality.

EQUIPMENT

With the proceeds of a SLEPA grant, the Arson Unit purchased and placed into service a new arson emergency truck in 1982. This vehicle is much larger than the previous arson van, which is now used as a back-up vehicle by the second arson team. The new truck, somewhat resembling a step-van, is large enough and

specifically designed to interview witnesses and take their statements in its rear compartment. The vehicle also provides the electrical power to operate the unit's flood lights and other electrical equipment at fire scenes. It has multiple charges for rechargeable flashlights, hand lanterns and handi-talkies when the vehicle is on standby. Besides numerous hand tools and cameras, the vehicle also carries two hydrocarbon gas detectors, a portable circular power saw, a water vacuum, two portable self-contained breathing units, two ladders and various other equipment for on-scene use.

The county provides the protective clothing used by the arson investigators. Each investigator is issued a protective fire helmet, a firefighters' "turnout" coat, fire boots, jump-suits, heavy protective gloves and military-type field jacket with hood and removable liner. The clothing is distinctively marked "Arson Investigation Unit" in gold lettering on red material to clearly indicate they are arson investigators. This has been demonstrated to have very positive community relations effect. In addition, each investigator is issued an arson investigator shield and identification by the County Prosecutor.

THE ARSON TEAM

Each basic arson investigation team is comprised of three arson investigators: one full-time county investigator and one fireman and one policeman, or one county investigator together with two firemen. The county investigator is the team leader. He is to oversee and aid the municipal-assigned arson investigators in their work. It is his responsibility to ensure that all

investigative requirements are met to take the case to trial; he is also responsible for the follow-up investigation. It is the team leader who is responsible for the investigation and the safety of the team. He must ensure that the safety clothing and equipment is properly worn and that any arson investigators entering a burned structure are accompanied by a fellow investigator (the "buddy system") for safety.

"ON CALL"

The Arson Unit is on-call 24 hours per day. They are activated to respond to a suspicious fire by the municipal fire (or police) department upon radio pager notification through the County Police radio control center. There are two arson teams on-call every 24 hours. The "First Team" responds to all requests from municipal departments on suspicious fires, while the "Second Team" is used as a back-up to assist the "First Team," or to respond to a second fire while that "First Team" is still at the scene of a fire. Team leaders (county investigators) revolve call daily, while the municipal team members revolve weekly--one week on "Second Team" and then one week on "First Team" (being on-call for the two week period once every nine or ten weeks).

ON THE SCENE

Once requested to the scene of a suspicious fire and fire suppression is concluded, the arson team--by virtue of the authority of the County Prosecutor--assumes full jurisdiction of the scene. The team cordons off the fire scene, determines the "cause and origin" of the fire, collects evidence, prepares fire scene sketches, interviews firefighters, victims, neighbors, and

other possible witnesses to determine if an arson has occurred, and prepares the case for prosecution if it is an arson.

TRAINING/WEEKLY MEETINGS

All members of the Arson Investigation Unit are fully trained. Continued training is conducted through advanced arson training courses given by the Division of Criminal Justice, other agencies and in-house.

The members of the Arson Investigation Unit are required to attend weekly meetings held at the Clark Fire House. At those meetings all Arson Unit responses for the preceding week are critiqued, new investigative techniques and equipment discussed and instruction in specific arson subjects such as electrical fires, photography, evidence preparation, crime scene sketching, building construction, deed and mortgage searches, insurance policies, chemical and mechanical ignition devices, etc., are taught. Outside experts are brought in to enhance the in-house instructors. The assistant prosecutor assigned to the Arson Unit periodically explains recent changes in law or evidentiary matters and keeps the unit apprised of the status of open cases.

The radio pager units are reassigned and the new weekly team schedules are issued at each meeting to the new team assigned for the week.

PUBLIC INFORMATION

In addition to the continuing in-house training of its members, the Arson Unit also provides seminars to municipal fire departments to explain its operations and to foster closer

cooperation in combatting arson. The members also give presentations to various civic, service, and fraternal organizations on the subject of arson and Arson Unit's duties. Posters have also ben distributed advertising the existence of the Arson Unit and providing a 24 hour telephone number, the Arson "Hot-Line", to provide information concerning arson. Liaison has also been made with the Independent Insurance Agents of Union County, and that organization has provided cash rewards for persons providing information leading to the conviction of an arsonist.

ASSISTANT PROSECUTOR

Following the concept of vertical prosecution, an assistant prosecutor is assigned to handle all of the arsons in the county. Also on-call 24 hours, he is available to respond to the scene if necessary, obtain search or arrest warrants, and otherwise be of legal assistance. The assistant then supervises the investigation of the case to the Grand Jury for indictment. After indictment, arson cases have been transferred to trial teams for ultimate disposition. The assistant prosecutor, however, tracks the disposition of each case.

ALTERNATIVE APPROACHES

Several other counties, including Middlesex and Bergen, utilize Arson Task Forces - including full-time arson investigators, 24 hour availability, fire officer participation, etc. In others, such as Passaic, several investigators in the Homicide or Major Crimes Unit are assigned when calls come in. In the majority of counties throughout New Jersey, the Task Force concept is not a viable one for the simple reason that the vast

majority of the fire companies are all volunteer; hence, participation by the fire service is not practical. In many of these counties, an investigator form the Prosecutor's Office will respond at the request of the County Fire Marshal or the local police.

SETTING UP A SEX CRIMES UNIT

Assistant Prosecutor Robert D. Laurino
Essex County Prosecutor's Office

I. THE EVOLUTION OF SPECIALIZED SEX CRIMES UNITS

In the early 1970's, law enforcement agencies throughout the State became aware of the need to develop specialized units to deal with sex crimes cases. The purpose for establishing such a unit was twofold: to adapt law enforcement techniques to the peculiar methodology employed by sex offenders, while addressing the special needs of a victim traumatized by the sexual assault. Approximately ten years later, law enforcement officials began to recognize the need to give further specialized attention to child victims of sexual abuse. As a result, child sexual abuse personnel were designated within prosecutor's offices throughout the State. Today, a sex crimes unit can operate as a vital link between the investigation of adult and child sexual offenses, as well as the provision of services to sex crimes victims through the victim-witness coordinator.

II. THE FUNCTION OF A SEX CRIMES UNIT

The primary function of a sex crimes unit is to investigate sex crimes cases and prepare them for possible Grand Jury action. A sex crimes unit should operate as a clearinghouse for all reported sex crimes cases occurring within the county. The unit should be notified by all local law enforcement agencies within its jurisdiction whenever such a case arises. The local agency

should also provide the unit with a copy of its reports, and a photo or composite (if available) of the suspect. By receiving and reviewing such material, the unit will be able to discern patterns of offenses within the county which may extend beyond the boarders of a single municipality, and which could otherwise go undetected. The unit may, of course, initiate its own original investigations, independant from any outside agency.

When reports are received from a local agency, a file should be opened under the victim's name. Once a suspect is apprehended and a complaint is forwarded to the Prosecutor's Office, the material accumulated within the victim's file can be transferred into the defendant's case file. The peculiar characteristics of the offense or modus operandi of the offender should be catalogued for future reference. By utilizing a computer to log such material, the unit's investigators will have an invaluable tool to assist them and the local agencies in identifying sex offenders. Additionally, by compiling photographs of all sex offenders within the county, the unit will develop a valuable resource tool to be used by local agencies for the display of photographs of possible suspects to sex crimes victims.

Another major function of a sex crimes unit is to serve a liason with the myriad of law enforcement and social service personnel that will become involved in any sex crimes case. The assistant prosecutor and/or investigative superior designated to head the unit would act as a representative of the Prosecutor's Office with those diverse groups. First and foremost, a close working relationship must be developed between the unit and the

local police departments within the county. In addition, many other law enforcement agencies may become involved in sexual abuse cases, including the Attorney General, FBI, and Postal Inspectors. By sharing information, the investigative abilities of all parties will be enchanced. Second, the unit will often operate in conjunction with the Division of Youth and Family Services in child abuse cases. Under New Jersey Law, DYFS is required to report all cases of suspected child abuse to the county prosecutor. Upon receipt of such information by the unit, a determination may be made whether to handle the case as an original investigation or refer it to the applicable local police agency for further investigation.

Close attention must also be paid to those sectors that provide services to the traumatized victim. Thus, a third area of concern should be the operations of local hospitals in treating sex crimes victims. Uniform policies should be established for the treatment of victims and the documentation of their injuries. It is also necessary to make sure that the hospitals are properly utilizing sex crimes evidence kits for the gathering of evidence of sexual offenses. A fourth group, which should supplement the assistance provided by the area hospital, is the victim-witness program within each prosecutor's office. The sex crimes unit, working together with the victim-witness coordinator, can assure that the legal, medical and financial needs of the victim are properly served. This may be accomplished by providing assistance for medical and counselling expenses, guidance in obtaining restraining orders in domestic violence cases, and similar victim

oriented services. A fifth and final group that should be addressed is community health care professionals. The unit should develop lists of social workers, sexual abuse counsellors, psychiatrists, and/or psychologists to whom referrals can be made. Such individuals may not only be used for counselling, but also for the evaluation of victims for evidence regarding symptoms of rape trauma or child abuse syndrome.

A sex crimes unit will also serve a major role by acting as a legal and technical advisor in sex crimes cases. The assistant prosecutor assigned to the unit will often be called upon by local departments to render his or her opinion on the existance of probable cause, the legal sufficiency of proposed criminal charges, and the adequacy of search warrants. Additionally, the assistant prosecutor may also have to initiate motions for investigative detentions, the taking of blood, saliva, and hair samples, or similar investigative procedures at the behest of a local agency. Technical assistance may also be requested by local agencies in organizing lineups, photo arrays, and polygraph examinations. Such legal and technical advice, however, is not merely for the benefit of outside agencies. The expertise developed by the unit should be made available to the general trial and investigative staff of the Prosecutor's Office in the fulfillment of their duties.

A final function of the sex crimes unit is to serve as an educational instrument in disseminating knowledge about sexual offenses. The unit should take an active role in the training of local department personnel in sex crimes investigation, as well as

the teaching of such techniques and the applicable statutory law to police academy recruits. Speakers should also be made available, upon request, for lecturing to appropriate civic, educational, or community groups.

III. THE STAFFING OF A SEX CRIMES UNIT

Proper staffing is the key to the successful operation of a sex crimes unit. Due to the highly emotional nature of the work that will be handled on a daily basis, only those individuals who express an interest in sex crimes investigations should be permitted to join the unit. A flexible staffing policy should be maintained, whereby personnel may opt to be transferred out of the unit to prevent "burnout" as a result of job-related stress. Only those individuals who are experienced, highly motivated, and even-tempered should be considered for staff positioins since they will be more able to attend to the special needs of the victim while maintaining a professional independence in their case investigation and evaluation. Ideally the unit should be staffed by both male and female personnel, but the sex of the staff members is not as important as their possessing good investigative skills and sensitivity in dealing with victims of sexual abuse.

IV. OPERATIONAL MODELS

The following models are provided as examples for establishing a sex crimes unit or modifying an existing unit. Adoption of any of the several modes offered will depend upon the overall staffing and budgetary constraints existing in an individual office. The models may also be modified to conform to the particular needs of each prosecutor's office.

Initially, the investigative staff should be organized to operate in one of the following fashions: Direct Response, Modified Response, or Support Services. In the case of a Direct Response unit, a local police department would call the unit at the prosecutor's office during regular business hours, or an on-call representative during after hours to report the occurrance of any sex crime of an indictable nature. Upon receipt of the call, the on-call detective would respond to the scene, or an investigative superior would dispatch an investigator to the scene. At the scene, the investigator would work with the local agency in collecting evidence, interviewing the victim, witnesses, and even possible the defendant, as well as assist in any continuing investigation. A case file would be developed to include all hospital and laboratory reports, all police and DYFS reports, a criminal history record check, or similar material. The unit may also initiate its own original investigations, as in the case of direct DYFS referrals. As the case progresses, the investigator would work together with an assistant prosecutor to insure that all legal strictures are being met. Offices that have adopted this system have found it to be extremely helpful in allowing a case to be fully developed by experienced investigators from the time of its inception. This, in turn, has had a direct result upon the conviction rate, since the well prepared cases are often disposed of through plea negotiations or successfully tried in court.

A similiar system that can operate with fewer personnel is the Modified Response unit. When an indictable sex crime occurs,

the local police department would contact the prosecutor's office during working hours, or an on-call representative after regular business hours. Either an assistant prosecutor or investigator in charge would evaluate the information to determine whether the case is significant enough to warrant a response. A relatively minor case (for example, a case of sexual contact where one individual touches another on one's buttocks) may be easily handled by the local agency without the need to expend the limited resources of the unit. If a response is warranted, an investigator will be dispatched to the scene to work with the police in collecting evidence, conducting interviews, and continuing the investigation. A case file will be developed containing all medical, laboratory, police, and social service reports, as well as the defendant's prior record. The investigator would consult an assistant prosecutor throughout the investigation to assure that a legally supportable case is being constructed. The investigators would also conduct original investigations emanating from the unit, and would develop the case files for all those cases in which the unit did not directly respond. DYFS cases may either be handled as original investigations or referred to the appropriate local police department for investigation.

The final operational model for an investigative unit is one that provides Support Services. A unit organized on this basis will not report to the scene unless specifically requested by a local department, due to the serious nature of the crime or the need for the specialized expertise of a sex crimes investigator. In case the latter arises, an investigator would be available on

an on-call basis after normal business hours. The local agency would, however, have to notify the presecutor's office no later than the next business day of any indictable case so that the unit could intervene early in the case, if it so desired.

In the Support Services model, the local agency would be primarily responsible for investigating the crime, obtaining statements, collecting and preserving evidence, and submitting evidence for forensic testing at the appropriate local, county or regional State Police laboratory. Adequate training must, of course, be provided to the local agencies to guide them in their investigations. When the local complaints are ultimately received by the prosecutor's office, the case should be reviewed by an assistant prosecutor or supervising investigator, and either directly assigned to an investigator or randomly distributed to the investigators on an equal basis. The investigator will then be responsible for completing the file by obtaining all appropriate reports (including police, hospital, laboratory, DYFS, and criminal history reports), and assisting in any necessary follow-up investigation (for example, taking additional statements). An assistant prosecutor will consult with the investigator regarding any legal issues that may arise. The investigators will also conduct original investigations, including DYFS cases, if those cases are not directly referred to a local department for investigation.

The legal staffing of a sex crimes unit may be accomplished through the utilization of a Supervising Attorney or Unit Director. A Supervising Attorney would be used where the volume

of work requires only one assistant prosecutor to handle the case-load. The Supervising Attorney would report directly to the Prosecutor, First Assistant Prosecutor, or their deputy. It is the duty of the Supervising Attorney to maintain overall supervision of ongoing investigations, and to offer advice and guidance in developing a legally viable case. Thus, the Supervising Attorney would receive and evaluate all completed investigations, and return any investigation for additional work should it be warranted. Throughout the course of the investigation, the case should be reviewed for the legal sufficiency of the charges, with due regard for the possibility of a downgrade, administrative dismissal, pre-trial intervention, pre-indictment plea, or ultimate submission to a Grand Jury. If the case is to be presented before the Grand Jury, the unit attorney should personally interview the victim prior to the taking of testimony. Additionally, serious consideration should be given to having the victim personally appear before the Grand Jury so that the individual may be properly evaluated in the setting of a legal proceeding, while enabling the victim to become familiar with the legal process prior to trial. Upon completion of the Grand Jury proceedings, the Supervising Attorney will review the indictment for accuracy and sign it. The Supervising Attorney may then engage in pre-trial plea negotiations and pre-trial motions until the case is assigned to the general trial staff, or personally retain the case for trial if so desired. The Supervising Attorney should, however, be consulted on all proposed pleas due to the unit's superior knowledge of the case.

Where the volume of cases handled by the sex crimes unit requires more than one assistant prosecutor to handle the workload, the unit should operate under the supervision of a Unit Director. The Unit Director would be responsible for the daily operation of the unit, and would report directly to the Prosecutor, First Assistant Prosecutor, or their deputy. A major function of the Unit Director is to review all cases and designate a staff attorney to work with an investigator in developing the case. The staff attorney should, when possible, meet with the victim during the course of the investigation. Upon completion of the investigation, the staff attorney would evaluate the case and make recommendations to the Unit Director regarding the disposition of the case (i.e., downgrading the charge, administrative dismissal, pre-trial intervention, pre-indictment plea, or Grand Jury presentation). The Unit Director would then determine the proper disposition, or consider the need for additional investigation, and proceed accordingly. If a case is to be presented before the Grand Jury by the staff attorneys or Unit Director, it is highly preferable to proceed upon the testimony of the victim so as to evaluate the individual's demeanor and prepare the victim for trial testimony in a courtroom setting. Upon return of an indictment, the assistant prosecutor who presented the case should review the indictment for accuracy, and then sign it. Staff attorneys may engage in pre-trial plea negotiations and motion practice until the case is assigned to a general trial attorney, or the staff attorneys may maintain the case for trial. All pleas

in sex crimes cases, however, should be subject to the approval of the Unit Director.

A final area of concern is for the clerical staff. The unit should be provided with the services of a stenographer-typist. The Steno-Typist would perform general secretarial duties, including collating and filing all police, hospital, laboratory, and DYFS reports. In addition, the Steno-Typist would be available to work with an investigator in taking written statements from victims and witnesses. In those offices which utilize prosecutor's Agents or Legal Assistants, such individuals can be employed to compile information regarding a defendant's modus operandi for future investigative purposes. Since the unit should have a computer to log the various characteristics of the individual offenders, the Agent or Legal Assistant would preferably have a background (or be trained) in the operation of a computer.

SETTING UP A WHITE COLLAR CRIME UNIT

Chief Assistant Prosecutor Randolph M. Subryan
Passaic County Prosecutor's Office

I. DEFINITION:

Criminologists and criminal justice practitioners have long argued over an appropriate definition of the term white collar crime. The argument is concentrated on whether white collar crime should be defined by the nature of the offense, or by the status, profession, or skills of the defendant.

The 1981 Dictionary on Criminal Justice Data Terminology defines white collar crime as "nonviolent crime for financial gain committed by means of deception by persons ... having professional status or specialized technical skills." The November 1986 Bureau of Justice Statistics Special Report Tracking Offenders: White Collar Crimes, adopted a definition which focused on the nature of the offense rather than the professional status or skills of the offenders. It defines white collar crime as "nonviolent crime for financial gain committed by deception."

Regardless of the definition which is given to white collar crime, it is clear that this area of crime has become a serious threat to the financial and moral well-being of our society. In discussing the impact which white collar crime has on our society, former Attorney General Ramsey Clark observed:

> Organized crime robs us of hundreds of millions of dollars every year through gambling, loansharking, drugs and extortion. Crime in the streets takes additional millions

> of dollars from hard working Americans in robberies, muggings, burglaries and looting. But white collar crime converts billions of dollars annually in consumer fraud, industrial pilfering, receiving stolen goods, tax evasion, swindling, embezzlement and price-fixing.

White collar crime is the most corrosive of all crimes. The trusted prove untrustworthy; the advantaged, dishonest. As no other form of crime, it questions our moral fiber. It digs deeper than the wallet or purse to wipe out the savings of a lifetime.

II. NECESSITY FOR ESTABLISHING A WHITE COLLAR CRIME UNIT:

Despite the seriousness of this type of crime, there appears to be a reluctance on the part of law enforcement agencies to allocate resources to combat white collar crime. As citizens we want the police to go after the bank robbers, murderers, arsonists, etc., but we are not so anxious for them to go after the swindlers or dishonest businessmen. White collar crime is still somewhat regarded as a sort of respectable crime and there is a reluctance on the part of victims, especially large corporations, to report perpetrators to law enforcement agencies.

An effective offensive must be mounted against white collar crime at the local, county and State levels. Owing to the complexity of this area of crime, local police departments usually find themselves unable to effectively investigate and prosecute said crimes. It is for this reason that the County Prosecutor's Office should establish a white collar crime unit, both to investigate white collar crimes and to assist the local police departments in any white collar crime investigations which it might undertake.

III. ESTABLISHING A WHITE COLLAR CRIME UNIT:

Once it has been decided to establish a white collar crime unit it is extremely important that the right staff be assigned to said unit. The assistant prosecutors who are assigned to the unit should have a background in accounting, business, financing, etc. Ideally, the assistant prosecutor should have a background in civil practice since in many instances cases are referred to a unit which require a knowledge of civil practice and procedure.

White collar crime investigations are tedious and complex and require a detailed knowledge of the law on the part of the assistant prosecutor. The assistant prosecutor should possess sound judgment and be decisive. The assistant prosecutor should also possess qualities of diligence, patience and persistence and must be prepared to devote considerable time to the reviewing of documents. The assistant prosecutors assigned to the white collar crime unit should also be capable trial lawyers since it is advisable that the more complex cases be retained by the unit for trial. The assistant prosecutor, by retaining the case for trial, will have the added advantage of thoroughly understanding the nature of the case since he or she has taken part in the investigation. Accordingly, the unit should only be staffed with experienced trial lawyers who also possess good investigative skills.

The investigators assigned to the unit must be extremely capable and be trained in various fields. Ideally, every white collar crime unit should be staffed by investigators who have experience in accounting, banking, tax fraud investigations,

financial investigations and insurance fraud investigations. Such expertise is invaluable and essential in combatting the more sophisticated white collar crime.

The recent increasing computer related crimes also mandates that investigators with backgrounds in computer training be assigned to white collar crime units. Investigators are now called upon to solve cases which involve the most sophisticated use of computers. Computers are the easiest to steal from--they do not leave footprints or fingerprints. The investigator must be trained in the area in which he is fighting this type of crime.

Many white collar crime investigations require an investigator with expertise in accounting. In many instances, accounts have to be audited before the full amount of the defalcation can be determined. In some instances, accounts have to be analyzed and reconstructed. Balance sheets have to be prepared and documents have to be examined. The investigator, who is also an accountant, is the only one capable of performing said duties with any degree of competence. Accordingly, it is extremely important that at least one accountant should be assigned to a white collar crime unit.

The vast increase in bank related frauds also requires that investigators with banking experience be assigned to the white collar crime unit. At least one investigator in the unit should specialize in investigating bank related frauds since it is important to develop good working relationships with all banks in the respective county. One investigator in the white collar crime unit in the Passaic Coun Prosecutor's Office has been trained to

investigate bank related frauds and has built a countywide reputation with the banks and local police departments. This investigator is usually consulted by the banks whenever there is a suspicion that a crime has been committed against the bank. Specialization however, while important, must not be permitted to become a concern so great that the unit loses its capacity to respond to new types of schemes or investigations.

The investigative staff should be headed by a competent captain or lieutenant who possesses qualities of leadership and dedication. The investigative supervisor should be supportive and helpful, but not closely directive in his supervision. The unit is staffed with experts in their respective fields and they should be permitted to develop their investigations without too much interference from a supervisor. The investigators must be accountable to their supervisor for their performance, but not for the details of their day-to-day work. The supervisor must be capable of offering advice and directions to the investigators whenever they encounter problems and ideally, should possess a background in the detection and investigation of white collar crime.

Every member of the white collar crime unit, including assistant prosecutors assigned to the unit, should also attend seminars and conferences dealing with the detection and investigation of white collar crime. Because of the changing nature of white collar crimes, it is imperative that all members of a white collar crime unit be aware of the most recent techniques that are used in the commission of said crimes. For

this reason, it is very important that continuing education in the detection and investigation of white collar crime be compulsory for every member of the unit.

Members of the white collar crime unit must also be prepared to offer their time in educating the public in the work which is conducted by the unit. Members of the public, in many instances, are unaware of the existence of a white collar crime unit and it is vitally important that the public be so informed. In this regard, members of the unit must be prepared to visit various organizations, such as businessmen associations, chambers of commerce, business bureaus, etc., to inform said organizations of the work which is performed by the unit.

A major problem which is encountered by the white collar crime units is to persuade victims, especially banks and major corporations, to report violations of the criminal statutes to law enforcement agencies. Many employers are reluctant to report their senior employees when said employees are involved in the commission of white collar crimes. Reputation is very important to businessmen and middle class people. An indictment and conviction of a colleague has a powerful effect on the business community and can in many instances have a deleterious effect upon the reputation of the business. On the other hand, the failure to report violations of the criminal status to law enforcement agencies can only result in the continued commission of crime. For this reason, it is vitally important that the public, in general, and large corporations, in particular, be educated as to the importance of reporting the commission of white collar crimes

to law enforcement agencies. Members of the white collar crime unit can accomplish this goal by lecturing to the various business organizations, thereby publicizing the work of the unit.

Members of the white collar crime unit of the Passaic County Prosecutor's Office also lecture to various insurance companies, banking conferences and the police academy in the detection and investigation of white collar crime. It is also important that a close working relationship be developed with local police departments as well as other law enforcement agencies, both state and federal. There are many instances when the white collar crime unit will be called upon to work with federal agencies such as the Secret Service, Federal Bureau of Investigation, postal inspectors, etc., in the investigation of cases. The unit should therefore be staffed with members who are capable and willing to work with outside agencies.

IV. CONDUCTING INVESTIGATIONS BY THE WHITE COLLAR CRIME UNIT:

White collar crimes are referred to the unit from a number of different sources. Attorneys whose clients have been victimized in fraud schemes usually contact the white collar crime unit and the victims then supply sworn statements relating to the alleged violations. Banks which have been defrauded by customers, or other persons, usually refer said investigations to their security departments. It is important that the unit has a good working relationship with the members of the security department of the various banks since many investigations are referred to the unit by the security department.

Corporations, department stores, insurance companies, members of the public, etc., are also sources from which complaints are received. Local police departments also refer cases to the white collar crime unit since they are not equipped to investigate the more complex cases. Regardless of the source of the referral, it is important to determine initially whether or not the matter is criminal. Many corporations and private individuals attempt to use the white collar crime unit as a debt collection agency and will discontinue their cooperation and/or prosecution if they are reimbursed by the alleged perpetrator. For this reason, the assistant prosecutor must determine whether the matter is criminal or civil before initiating an investigation. Victims must be told that the unit does not function as a debt collection agency and that they will be required to pursue prosecution in the event that criminal charges are warranted.

Once it has been determined that an investigation should be commenced, the assistant prosecutor in charge of the unit and/or the captain or lieutenant should assign the case to an investigator. It is important that the case be assigned to the investigator having the necessary expertise for that investigation. Investigations should be assigned numbers and all necessary information pertaining thereto should be recorded. It is also recommended that an initial document showing the case number, name of subject, name of complainant, allegation, investigator assigned, date opened and a synopsis of the case, be prepared by the person who has authorized the investigation to be

opened and a copy should be placed in the investigative file which is maintained by the investigator.

The assistant prosecutor should also maintain an attorney's file on each investigation and copies of documents which are in the investigative files, except records, computer printouts, etc., should also be kept in the attorney's file. It is important that investigators and assistant prosecutors be trained to keep good records since a successful prosecution of a white collar crime case depends to a large extent upon the accumulation and keeping of proper records.

The assistant prosecutor should schedule regular meetings with each member of the investigative staff in order to review the progress of the investigation and to offer advice, when needed. The assistant prosecutor and investigators should work as a team and the assistant prosecutor should encourage the investigators should work as a team and the assistant prosecutor should encourage the investigators to consult with him or her whenever advice or guidance is needed.

White collar crimes usually take considerable time to prepare and for this reason, it is recommended that criminal complaints should not be filed. If the investigation is properly conducted and all relevant documents are accumulated, the defense attorney will usually seek to plead the defendant guilty to an accusation. If the case cannot be resolved by pleading to an accusation, the case can then be presented to a Grand Jury. It should be remembered that the statute of limitations is five years and in the majority of cases the investigation will be completed in one

year or less. Proper and thorough investigation are vitally important in the successful prosecution of a white collar crime and in many instances said investigation will take considerable time. Patience and dedication are two of the virtues which should be possessed by everyone who is assigned to a white collar crime unit.

V. PUNISHING THE WHITE COLLAR CRIME DEFENDANT:

As stated supra, conviction of a white collar crime defendant depends to a large extent upon the thoroughness of the investigation. If a case is properly prepared and the assistant prosecutor is prepared to devote the required time and patience to conduct the prosecution, a white collar crime trial can be a rewarding experience. The assistant prosecutor, upon conviction of a defendant, should be forceful in seeking a prison sentence when one is justified. Judges are still reluctant to impose prison sentences upon defendants convicted of white collar crimes and it is the duty of the assistant prosecutors to attempt to change the views of the judiciary.

White collar crime can be successfully curbed if it is widely publicized and the offenders indicted, convicted and sentence to prison terms. Society should not condone or tolerate a double standard in the sentencing of offenders. Judges should be informed that "if white collar crimes which (reward) criminals (with) vast amount(s) of monies are not punished, society cannot justify the punishment of a blue collar criminal that steals a television set and sells it for $50 or snatches a purse (because he needs) money." State v. Todash, 177 N.J. Super. 418, 422 (App. Div. 1981). The incidence of white collar crime must be

reduced in our society and this can only be accomplished if the Prosecutor's Office is prepared to devote the time and resources to the detection and investigation of said crimes. Once convicted, the prosecutor should seek some meaningful punishment which in many instances should encompass a prison sentence.

SETTING UP AN INTELLIGENCE UNIT

Assistant County Prosecutor Dean H. Wyks
Atlantic County Prosecutor's Office

I. GOALS AND OBJECTIVES

The primary goal of an Intelligence Unit is to provide the Prosecutor and his staff with a descriptive analysis of both traditional and non-traditional forms of organized crime as well as major crime problems affecting the County and to recommend remedial action to combat infiltration by such criminal elements. The secondary goal is to serve as a monitor of trends in crime patterns within the County and provide information to enable the prosecutor to manage and arrange priorities for the priorities for the effective use of his investigative sources.

To achieve these goals, the primary objective of the Intelligence Unit must be to identify individuals and conspiratorial groups engaged directly or indirectly in targeted criminal activity and assess both the extent of the activity and its impact upon the County. It also must assess the extent of organized crime infiltration into both legitimate and illegitimate ventures and any trends in this regard. Further, the Unit should take an active role in the planning and implementation of investigations designed to apprehend and prosecute these individuals or groups as well as assist other specialized units within the Prosecutor's Office and local law enforcement community with their investigations of such related criminal activity.

II. STRUCTURE

In recognition of the need for the regular flow of information between law enforcement agencies, a discreet intelligence unit should have primary responsibility both for receiving and disseminating intelligence information concerning criminal activities by individuals or groups operating or affecting its county.

By centralizing this crucial but amorphous function within a single unit, the Prosecutor can obtain a comprehensive "picture" of organized and major crime problems within his jurisdiction. This will enable him to better marshal his resources to combat the same.

In that regard, the structure of an intelligence unit should include adequate supervision by superior officers, yet be streamlined enough to have direct access to the Prosecutor to insure the integrity of its functions. Accordingly, overall supervision of this unit must fall within the jurisdiction of a superior officer who has direct access to the chief of county detectives as well as an assistant prosecutor with direct access to the Prosecutor.

In addition, the Unit should be responsible for developing contacts with other law enforcement agencies and a means by which intelligence information can be gathered and shared with other agencies.

Finally, the intelligence unit should engage in direct gathering of intelligence information through proactive investigations designed to identify individuals or groups engaged

in traditional or non-traditional organized crime activity. This should include the use of normal investigatory practices such as surveillance as well as, where appropriate, the use of electronic surveillance.

All information gathered by the intelligence unit should be organized by that unit with the aid of computerization so as to facilitate ready access to comprehensive information as needed.

The Unit should also be responsible for performing the analysis and planning function to target individuals or groups for apprehension and prosecution. This should include the planning of specific proactive investigations to be conducted by the unit as well s providing assistance to other specialized units within the Prosecutor's office and local law enforcement community with investigations conducted by those units of such related criminal activity. Such analysis and planning will assure a coordinated and comprehensive attack upon organized and major criminal activities occurring within or affecting the respective county.

SETTING UP A NARCOTICS UNIT

Assistant Prosecutor James A. Hart, III
Union County Prosecutor's Office

It is the declared policy of this State that "despite the impressive efforts and gains of our law enforcement agencies, the unlawful use, manufacture and distribution of controlled dangerous substances continues to pose a serious and pervasive threat to the health, safety and welfare of the citizens of this State. New Jersey continues to experience an unacceptably high rate of drug-related crime, and continues to serve as a conduit for the illegal trafficking of drugs to and from other jurisdictions. In addition to the harm suffered by the victims of drug abuse and drug-related crime, the incidence of such offenses is directly related to the rate of other violent and non-violent crimes, including murder, assault, robbery, theft, burglary and organized criminal activities. For this reason, enhanced and coordinated efforts designed specifically to curtail drug-related offenses will lead inexorably to a reduction in the rate of crime generally and is therefore decidedly in the public interest." (N.J.S.A. 2C:35-1.1b).

Indeed, it has been recognized that the drug problem in this State and in fact throughout the entire nation has reached epidemic proportions. It has been estimated that in excess of 50% of the more than 400,000 criminal offenses committed annually in new Jersey are drug-related. The fiscal impact of the drug impact

in the State of New Jersey is almost incalculable. By one estimate, illegal drugs cost New Jersey citizens in excess of 1.5 billion dollars each year.

In 1986, in response to the problem, the Attorney General of the State of New Jersey implemented an action plan for narcotics enforcement designed to enhance and coordinate efforts to curtail drug-related offenses. A key ingredient of the action plan is the requirement that each county prosecutor establish a county-wide narcotics task force comprised of personnel from the prosecutor's office and from municipal police departments (Directive 4.1, Attorney General's State-wide Action Plan for Narcotics Enforcement).

This mandate, requiring the establishment of a county-wide task force by each of the twenty-one county prosecutors, is a result of the recognition that no one law enforcement agency has either the jurisdictional authority or resources needed to investigate, apprehend and prosecute drug trafficking networks which operate without regard to geopolitical boundaries.

Once established, it becomes the responsibility of the county-wide task force to coordinate and monitor all narcotics enforcement resources, programs and activities of all county and local law enforcement agencies operating within the county (Directive 4.2, SNAP). The benefits to a local police department in assigning manpower to the county-wide task force are threefold. First, the local department has access to a well-staffed, well-trained, and well-equipped investigative force capable of providing all necessary assistance within the borders of the

municipality. Secondly, municipal officers, after completing their tours of duty with the county-wide task force, return to the municipal department with invaluable experience, expertise, and contacts. Thirdly, assigning manpower to the county-wide task force allows for greater participation in the sharing of forfeited assets. Under the State's forfeiture laws, money and assets seized from and forfeited by drug distributors are to be shared between the investigating and prosecuting agencies. Theoretically, a municipal department assigning manpower to a county-wide task force should receive a larger share of confiscated assets at the end of each fiscal year.

The creation of multi-agency task forces fosters certain inherent problems which must be solved at the outset. Municipalities, as well as municipal officers assigned to the county-wide task force, must be provided with insurance protection for injuries suffered by the officer or caused by the officer. It appears that the best solution to this problem to date has been to have the county Board of Chosen Freeholders adopt resolutions agreeing to indemnify the officers and municipalities for liability and to provide counsel if necessary. The County Counsel can provide representation and the county's insurance carrier can extend coverage.

Payment of overtime to municipal officers assigned to a county-wide task force is another matter which must be discussed and resolved prior to the implementation of the program. Drug traffickers often transact their business at any time of the day or night. Narcotics wiretap investigations are generally

conducted twenty-four hours a day, seven days a week and thus consume vast amounts of manpower. Consequently, limitations of hours to be worked by Strike Force personnel must be established in advance in order to avoid surprise overtime bills after the fact. Compensatory time or time in lieu of monetary payment or "flex" time may be an acceptable compromise.

Lastly, it must be borne in mind that good communication is essential to a successful county-wide task force. It must not be assumed that local police chiefs will be briefed by their task force officers or will learn about successful operations through the media. Regular reports must be made to the local chiefs to keep them abreast of accomplishments as well as ongoing matters. Likewise, it should almost go without saying, that a police chief in a municipality in which a successful investigation has taken place should be included in any press conference or news releases.

SETTING UP A CHILD ABUSE UNIT

Assistant Prosecutor Debra J. Casadonte
Monmouth County Prosecutor's Office

PURPOSE

To establish a uniform policy of response and investigation by all agencies involved in the greatly increasing number of reported Child Abuse cases.

RESPONSIBILITIES

A County Child Abuse Unit is responsible for establishing a Team Response concept i.e., pooling the resources of all agencies involved in Child Abuse investigations. This promotes uniformity of procedures, improves the quality of investigations and prevents a duplication of effort. Moreover, the establishment of a "game plan" response to Child Abuse greatly lessens the chance of a case being mishandled through improper actions.

The Child Abuse Unit should deliver the following services:

1. Provide specialists trained in Child Abuse investigation on a 24-hour-a-day basis to municipal police departments and the Division of Youth and Family Services.
2. Provide legal assistance to municipal police departments on a 24-hour-a-day basis.
3. Coordinate investigations involving multiple jurisdictions.
4. Accept and investigate all referrals from the Division of Youth and Family Services as prescribed by N.J.A.C. 10:129 et seq.

5. Provide assistance to Federal Agents and the N.J. State Police in cooperative investigations.

6. Provide assistance to the out-of-jurisdiction departments upon their request.

7. Serve as a liaison between all support agencies.

8. Insure uniform case preparation for Court.

9. Maintain data on Child Abuse, to enable training personnel to target specific problem groups or areas. (Accomplished by local police forwarding a copy of reports of all crimes involving victims under the age of 18 to the unit.)

10. Provide training for municipal police, hospital personnel, Division of Youth and Family Services caseworkers, school teachers, etc.

11. Inform the public of its responsibility to report suspected child abuse, with emphasis upon early detection - early intervention.

PERSONNEL[1]

There is little difference between staffing the unit with male and female personnel; what is important is their ability to deal with people in a sensitive and professional manner.

It is recommended that investigative personnel be periodically rotated to avoid "burn-out." Burn-out syndrome is

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[1]In 1983, operating standards were approved and adopted by the County Prosecutors. See "Working Group on Child Abuse Investigations" report of June 25, 1983. These basic requirements have, in everyday application, proven inadequate for optimum performance. In view of this, the Personnel Section suggests a working model based upon case load and desired results.

unavoidable unless adequately abated. Periodic rotation in this instance has the dual advantage of keeping the investigative staff healthy and providing one of the best training grounds for personnel in your office.

In short, there is no other unit that can offer the volume or diversity of cases. The experience and skills gained by the investigators in the Child Abuse Unit facilitates their performance in other investigative capacities. Supervisory personnel do not have to be moved as frequently.

For maximum efficiency the unit should be staffed as follows:

ASSISTANT PROSECUTOR: Legal advisor to the unit available on a 24-hour-a-day basis. Responsible for proper case preparation for trial. Liaison with outside agencies.

UNIT SUPERVISOR: Responsible for unit personnel, all administrative duties, supervision of case investigation, case assignments, case intake screening and review of all cases being forwarded to Assistant Prosecutor for disposition.

INVESTIGATORS: To provide optimum response capability, a ratio of one investigator for every fifty cases opened per year is suggested. This ratio will enable the Unit to provide initial response with the reporting agency and the municipal police. The investigator is responsible for all facets of the investigation from referral through adjudication. Excluding legal research, the investigator is responsible for submitting a completed case investigation that is trial ready.

PARA-LEGAL: Pulls numbers on cases and logs same for statistic and retrieval purposes. Gathers written reports from

various agencies involved in the case such as hospital, DYFS, and police reports. Responsible for maintaining reference materials.

SECRETARY: All clerical duties. Responsible for transmittal of cases to the appropriate prosecutor. Maintains statistics and compiles the annual reports from same. She is also responsible for knowing where the unit personnel are located in the field.

BASIC EQUIPMENT NEEDED

In addition to equipment typically associated with investigations, e.g., typewriter, tape recorder, video equipment, interview room, a Child Abuse Unit needs anatomically correct dolls, emergency supply of sexual assault kits and beepers.

The dolls provide an avenue of communication with non-verbal children by allowing the child to demonstrate the assault. In case of a shortage of sexual assault kits at an area hospital, the Unit's emergency supply will preserve valuable evidence. The beepers are necessary to provide response on a 24-hour-a-day basis.

TRAINING THE INVESTIGATOR

Proper training is essential for all investigators in the Child Abuse Unit. The investigator must have a working knowledge of the functions, roles and limitations of the various agencies involved in child abuse investigations. The agencies include municipal police, State agencies, i.e., Division of Criminal Justice Institutional Abuse, Division of Youth and Family Services, area hospitals, mental health facilities and institutions that house children. The investigator must also have a working knowledge of the applicable laws and the court system.

Frequently, the difference between obtaining a confession or silence from a suspect depends upon the investigator's ability to relate to him. Inappropriate responses to a suspect's question: "What's going to happen to me?" will guarantee the suspect's exercise of his right to remain silent. However, an informed discussion of pleading to an accusation in incest-type cases, for instance, frequently leads to a plea simply because the suspect does not wish to incur the expense or the further embarrassment of a trial.

Finally, the investigator's knowledge of the theories that underlie physical, emotional and sexual child abuse frequently provide the means to relate to suspects on their psychological level, facilitating case adjudication.

Following is a schedule of areas of Investigator Training:

INVESTIGATOR ON-THE-JOB TRAINING

A. Unit Objectives

B. Introduction to Outside Agencies

1. Police

a. Local
b. State
c. Federal-Sexual Exploitation of Children Law

2. Division of Youth and Family Services

a. District Office in your County
i. Prime Investigation Agency
ii. Initial Response
b. DYFS Regional Office (Institutional Abuse Investigation)
i. Responsible for all State or County Institutional Child Abuse Investigations
c. New Caseworker Orientation

3. Hospitals-Emergency Room

   a. Child Abuse Protocol-Investigator should be aware of procedures
   b. Establish Protocol

4. Mental Health Facilities

   a. Hospital In-patient
   b. Clinics
   c. Individual Counsellors
   d. Establish rapport with satellite agencies

5. Institutions

   a. County Children's Shelter
   b. Juvenile Detention
   c. Any other facility housing children in your jurisdiction
   d. Introduction of investigator to all institutions within their jurisdiction

6. Assist other departments (out of your jurisdiction cases)

   a. Request received
   b. Permission obtained
   c. Task performed
   d. Report forwarded to requesting agency

C. Statutes and Rules pertaining to SC/CA Cases

1. Criminal

   a. 2C
   b. Title 9

2. Family Court

   a. Title 9
   b. NJAC Rules on Juvenile Disclosures
   c. Affidavit-reference Criminal Investigation for support of DYFS position in Family Court on Order of Supervision or Child Removal

3. Rules of Evidence

4. Special Rules on Juvenile Disclosures

D. Attitude and Demeanor

E. Actual Investigation

1. Referrals

    a. Police
    b. DYFS
    c. Other

2. Notification to Local Police

3. Initial Response

4. Control of situation including family response

5. Physical evidence collection, control and submission

6. Victim approach and statement

7. Suspect approach and statement

8. Incident corroboration-fresh complaint witness

9. Full exchange of reports

    a. Police
    b. DYFS

10. Alternatives to Trial

    a. Pre-trial Intervention
    b. Plea to Accusation
    c. Plea to Indictment

11. Pre-Grand Jury Discovery

12. Municipal Court

    a. Complaint Summons
    b. Complaint Warrant
    c. Bail Determination
        i. Superior Court Judge
        ii. Municipal Judge
    d. Initial Hearing
    e. Probable Cause
    f. Remand by Grand Jury

13. Grand Jury

    a. On Complaint
    b. Direct presentation

14. Trial

    a. Pre-trial Motions

b. Pre-trial interview of witness by Assistant Prosecutor
c. Court Demeanor
d. Testimony
e. Sequestration of Witnesses.

F. Investigator Training Schools

1. Sex Crimes Investigation and Analysis-New Jersey State Police Academy

2. Method of Instruction Course/New Jersey State Police Academy.

3. Joseph Peters Institute/Sex Abuse Course/ Philadelphia, Pennsylvania

4. John Jay College Seminar on Sex Crimes Investigation/New York City, New York

5. John Jay Course on Child Abuse Investigations/New York City, New York

6. Child Abuse and Exploitation Investigative Techniques Training Program/Glynco, Georgia

7. Sex Abuse Committee participation - equivalent to a monthly seminar on various phases of Child Abuse Investigation

Monmouth County has a Child Sexual Abuse Committee and a Male Victimization Committee that meet every four weeks. They are comprised of County Investigators, Police, DYFS, Hospital, Psychologists and Therapists. At these sessions, members exchange information gathered at various seminars from schools they have attended. Any problems surfacing on cases are discussed and solved utilizing group resources.

OUTSIDE AGENCY TRAINING AND COOPERATION

It is of primary importance that the various agencies involved in these cases understand their roles in the child abuse investigation. With a little effort toward cooperation, an excellent working relationship can be established. Periodic meetings with the Division of Youth and Family Services can be held before any problems get out of hand. For example, once DYFS

has established that it is likely a crime has been committed, the police can be summoned and the suspect may be confronted by the police and/or the investigator assigned.

Periodic training sessions can also be held for DYFS, hospitals, municipal police, mental health personnel, and school personnel. Often, outside agency personnel are not aware of the mandatory reporting laws in child abuse cases. If your volume of reported cases is extremely low, it may be caused by an agency's lack of knowledge of the law.

COMMUNITY EDUCATION

The Unit is also responsible for community education in the area of child abuse. Most lay people have little knowledge of law with regard to their legal duty to report suspected child abuse (N.J.S.A. 9:6-8.10 and N.J.S.A. 9:6-8:10a); their immunity from liability for reporting it (N.J.S.A. 9:6-8:13); or the penalty involved for knowingly failing to report child abuse (N.J.S.A. 9:6-8:14). A concerted effort should be made by unit personnel to inform civic organizations, service organizations and the general public. This can be achieved by providing guest speakers and liberal dissemination of information through the various media.

CHILD ABUSE TASK FORCE

Monmouth County Prosecutor John A. Kaye established a Child Abuse Task Force in May of 1984. The group is made up of volunteers ranging from doctors to homemakers who are interested in the various areas of Child Abuse. Subcommittees were formed according to interest in Education, Interagency Cooperation, Court Liaison, Media, Alternatives, Legislative, Legal Rights and

Volunteers. The groups are reviewing the materials and situations that currently exist and drawing up proposals for improvements. The proposals will be reviewed by the Prosecutor. Those deemed feasible will be developed and instituted by that subcommittee.

DISENFRANCHISEMENT OF CONVICTED PERSONS AND NOTICE TO ELECTION OFFICIALS

Assistant Prosecutor Steven J. Kaflowitz
Union County Prosecutor's Office

Pursuant to N.J.S. 19:4-1, certain persons convicted of violations of Title 19 (Elections), and all persons convicted of indictable offenses who as a result are serving a sentence or are on parole or probation, are disqualified to vote.

In order to ensure that such persons do not vote, Prosecutors are required to issue a monthly notification to the election officials of any concerned county of any such convictions occurring within that Prosecutor's county. N.J.S. 19:31-17 provides that during the first five days of each month the Prosecutor shall deliver to the Superintendent of Elections, or to the Commissioner in counties not having a Superintendent, "a list of the names and addresses of all persons and their ages and offenses who have been convicted during the previous month of a crime which would disenfranchise them under the laws of this State."

On the page which follows there is reprinted a suggested cover letter to accompany the notification list sent to county election officials.

January 5, 1988

Commissioner of Voter Registration
Monmouth County Board of Elections
Monument Street
Court House
Freehold, New Jersey 07728

Re: Notice of Voter Disqualification

Attached please find a list containing the names, addresses, dates of birth as well as the offense, date of sentencing and sentence for residents of your county who have been convicted of an offense requiring their disenfranchisement pursuant to N.J.S. 19:4-1.

You are requested to remove these individuals from your permanent registration list, in accordance with N.J.S. 19:31-17.

Sincerely,

Prosecutor of _____County

Attachment

POLICY STATEMENT OF THE ATTORNEY GENERAL OF NEW JERSEY AND THE COUNTY PROSECUTORS ASSOCIATION OF NEW JERSEY REGARDING PROSECUTORIAL REVIEW OF SEARCH WARRANT APPLICATIONS

Assistant Attorney General John DeCicco
Division of Criminal Justice

Court authorized searches of dwellings, places of business and automobiles are significant weapons in law enforcement's arsenal for the detection and prosecution of violators of the law. Nevertheless, while the law enforcement community has a continuing obligation to fulfill its prosecutorial mandate, it also recognizes that court authorized searches of dwellings, places of business, and, to a lesser extent, automobiles are significant intrusions which require strict adherence to existing legal and administrative standards. The trial and appellate courts of this State have also consistently maintained that "strict adherence to the protective rules governing search warrants is a critical part of the constitutional armory safeguarding citizens from unreasonable searches and seizures."[1] As the chief law enforcement officers in their jurisdictions, the Attorney General and the County Prosecutors have the ultimate responsibility for ensuring that search warrants are properly and effectively utilized. Their role is both to guard against unreasonable searches and to ensure that the guilty are prosecuted and appropriately punished. In furtherance of these dual objectives, the Attorney General and several individual County Prosecutors

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[1] State v. Valencia, 93 N.J. 126, 134 (1983).

have previously instituted centralized search warrant approval procedures wherein all search warrants must be reviewed and approved by a prosecuting attorney before submission to an issuing court. Nevertheless, this practice has yet to be uniformly implemented on a statewide level. Recent events clearly demonstrate the need for the institutionalization of a systematic search warrant review procedure in New Jersey.

In July 1984, a presentment was issued by a special county grand jury concerning the mistakes made by a local police department in the securing of a search warrant and the subsequent seizure of private property. The warrant and resulting seizure were later found to be improper for a number of reasons. In that instance, had the local police department followed existing county policy requiring review and approval of search warrants by the prosecutor's office, the unfortunate events which thereafter transpired would have been avoided. The presentment, therefore, called public attention to the need for strict adherence to a uniform policy requiring search warrant review and approval by prosecuting attorneys.

At virtually the same time as the grand jury was issuing its presentment, the United States Supreme Court decided several cases which placed renewed emphasis on the role of the police officer in the procuring and execution of search warrants.[2] In those cases, the Supreme Court indicated that great deference is to be given to a police officer's assessment of the facial validity of a

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[2]United States v. Leon, 104 S.Ct. 3405 (1984) and Massachusetts v. Shepard, 104 S.Ct. 3424 (1984).

search warrant and his reasonable reliance thereon where that warrant has been issued by a court of competent jurisdiction. The enhanced reliance on the police officer's determination as to the existence of probable cause and the propriety of resulting search highlights the need for the input of legal expertise at the earliest possible time. Such a review will detect any defects in a search warrant application in order that the police may reasonably rely on the contents thereof in executing the warrant.

The increased need for a statewide policy with respect to prosecutorial review of search warrant applications was recently addressed by the New Jersey County Prosecutors Association and the Attorney General, through the Division of Criminal Justice. At a meeting on November 7, 1984, the County Prosecutors Association and the Division of Criminal Justice agreed in principle to the need for a systematic statewide policy of prosecutorial review of search warrant applications. Pursuant thereto, the Attorney General, the Director of the Division of Criminal Justice and the County Prosecutors hereby jointly adopt the following policy statement:

> **ALL APPLICATIONS FOR SEARCH WARRANTS SHALL BE REVIEWED BY THE ATTORNEY GENERAL OR HIS DESIGNEES, OR THE APPROPRIATE COUNTY PROSECUTOR, OR HIS DESIGNEES, PRIOR TO THEIR SUBMISSION TO THE COURTS FOR AUTHORIZATION.**

In furtherance of this policy and accompanying statement, effective immediately, county and municipal law enforcement officers must obtain authorization from the appropriate County Prosecutor's office prior to applying to the court for the issuance of a search warrant, be it telephonic or written. State

law enforcement officers shall likewise secure approval of warrant applications through either the Division of Criminal Justice or the County Prosecutor's office, whichever is appropriate. The Division of Criminal Justice and the County Prosecutor's offices shall institute the necessary procedures to ensure that this statewide policy is effectively implemented.

For the Attorney General of New Jersey:

/s/
Donald R. Belsole, Director
Division of Criminal Justice

DATED: February 5, 1985

For the County Prosecutors:

/s/
Joseph A. Falcone, President
County Prosecutors Association of New Jersey

DATED: February 5, 1985