



State of New Jersey

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**ATTORNEY GENERAL DIRECTIVE
NO. 1998-1**

**PROSECUTING CASES UNDER
THE COMPREHENSIVE DRUG REFORM ACT**

WHEREAS, the New Jersey Supreme Court on February 19, 1998 issued its decision in State v. Brimage, 153 N.J. 1 (1998), instructing the Attorney General to promulgate new plea offer guidelines that all counties must follow in handling cases arising under the Comprehensive Drug Reform Act that carry a mandatory minimum term of imprisonment and parole ineligibility so as to ensure the uniform enforcement of the law in all jurisdictions throughout the state; and,

WHEREAS, Governor Christine Todd Whitman has established a Drug Enforcement, Education, and Awareness Program that is designed to marshal the state's law enforcement, health, and education resources to respond in a decisive and carefully-coordinated fashion to the state's evolving drug problem, and that recognizes that drug enforcement and prosecution efforts are the cornerstone of New Jersey's overall crime strategy; and,

WHEREAS, Attorney General Executive Directive No. 1996-03 was issued on October 30, 1996 declaring that the enforcement and prosecution of all offenses under the Comprehensive Drug Reform Act, N.J.S.A. 2C:35-1 et seq., shall be an urgent priority of all law enforcement and prosecuting agencies within the State of New Jersey; and,



WHEREAS, the New Jersey Supreme Court's decision in State v. Brimage provides an important opportunity to review, revise, consolidate, and enhance New Jersey's drug prosecution policies on a comprehensive basis;

NOW, THEREFORE, I, PETER VERNIERO, Attorney General of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., do hereby DIRECT that the enforcement and prosecution of all offenses under the Comprehensive Drug Reform Act shall continue to be an urgent priority of all law enforcement and prosecuting agencies within the State of New Jersey, and do further DIRECT that all county prosecutors, assistant prosecutors, and assistant and deputy attorneys general in the Division of Criminal Justice shall comply with and be guided by the following policies, procedures, and practices when prosecuting cases arising under the Comprehensive Drug Reform Act:

1. *Uniform Enforcement of Statewide Drug Prosecution Policies.*

It shall be the responsibility of each county prosecutor and the Director of the Division of Criminal Justice to make certain that all assistant prosecutors and assistant and deputy attorneys general who handle cases arising under the Comprehensive Drug Reform Act, N.J.S.A. 2C:35-1 et seq., are aware of and comply with the provisions of this Directive and the Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12, which are appended hereto and are made part of this Directive.

2. *Mandatory Charging of School Zone Distribution-Type Offenses.*

The county prosecutor, or Director of the Division of Criminal Justice in cases prosecuted by the state, shall make certain that if any conduct constituting an offense under N.J.S.A. 2C:35-5 (Manufacturing, Distributing, or Possessing With Intent to Distribute a Controlled Dangerous Substance) occurred on or within 1,000 feet of school property, the defendant is charged with a violation of N.J.S.A. 2C:35-7, even though the police department making the arrest did not originally charge a violation of N.J.S.A. 2C:35-7. It shall be the responsibility of the prosecuting agency to determine in each case whether the prohibited conduct took place within a school zone.

3. *Incorporation of Attorney General Plea Negotiation Guidelines.*

Where a defendant is charged with an offense arising under the Comprehensive Drug Reform Act that carries a mandatory term of imprisonment and parole ineligibility

subject to the waiver provisions of N.J.S.A. 2C:35-12, the case shall not be disposed pursuant to a negotiated agreement with the prosecution, except in accordance with the provisions of the Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12, as may be revised from time-to-time by order of the Attorney General, which are appended hereto and incorporated by reference herein.

4. *Disposition of Repeat Drug Offenders Subject to an Extended Term Under N.J.S.A. 2C:43-6f.*

a. Whenever a defendant is charged with any of the enumerated crimes in N.J.S.A. 2C:43-6f, the prosecutor shall determine whether the defendant has previously been convicted of manufacturing, distributing, dispensing, or possessing with intent to distribute controlled dangerous substances in this state or any other jurisdiction and who is therefore eligible for a mandatory extended term of imprisonment under N.J.S.A. 2C:43-6f.

b. The county prosecutor, or Director of the Division of Criminal Justice in cases prosecuted by the state, shall apply for an extended term of imprisonment pursuant to N.J.S.A. 2C:43-6f, unless there is a basis for waiving an extended term pursuant to ¶ c of this section.

c. The following circumstances shall constitute the only grounds for waiving an extended term of imprisonment pursuant to N.J.S.A. 2C:43-6f:

- i. The state is unable to establish the grounds for an extended term by a preponderance of the evidence in accordance with N.J.S.A. 2C:43-6f and 2C:44-4d; or,
- ii. The prior conviction relied upon to establish the defendant's eligibility for an extended term was based on a plea or trial at which the defendant did not have the benefit of counsel or did not effectively waive the right to counsel; or,
- iii. The defendant pleads guilty to an offense pursuant to a negotiated agreement with the prosecutor that provides that the defendant will be sentenced to a custodial term of parole ineligibility not less than the term prescribed under the applicable cell in Table #2 of the Attorney General

Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12 and in accordance with the provisions of those Guidelines; or,

- iv. The state determines that waiver of the extended term is essential to assure the defendant's cooperation with the prosecution, and the defendant is eligible for a downward departure for substantial cooperation in accordance with the policies and procedures established in Part X of the Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12.

5. Conspiracy Liability.

Under current law, the mandatory Drug Enforcement and Demand Reduction Penalty prescribed by N.J.S.A. 2C:35-15 and the mandatory loss of driving privileges prescribed by N.J.S.A. 2C:35-16 is not imposed on a conviction of conspiracy in violation of N.J.S.A. 2C:5-2, even if the object of the conspiracy constitutes an offense under Chapter 35 of Title 2C. See State in the Interest of W.M., 237 N.J. Super. 111, 118 (App. Div. 1989). In certain circumstances, it may be appropriate for a prosecutor to permit a defendant or juvenile to plead guilty to a conspiracy offense in exchange for the prosecutor's agreement to dismiss a remaining count(s) under Chapter 35 of Title 2C, so as to allow the defendant or juvenile to retain his or her driving privileges so that he or she can continue to assist law enforcement in identifying, apprehending, and prosecuting more culpable offenders. Accordingly, a county prosecutor, or the Director of the Division of Criminal Justice in cases prosecuted by the state, may permit a defendant or juvenile to plead guilty to a conspiracy charge in exchange for the prosecutor's agreement to dismiss one or more a counts charging a violation of any provision of Chapter 35 of Title 2C, but only where:

- a. The prosecutor represents of the record that there is insufficient evidence to warrant a conviction or adjudication of delinquency for the offense arising under Chapter 35 of Title 2C; or,
- b. The defendant or juvenile has agreed to provide substantial cooperation in assisting the prosecutor or another law enforcement agency in the identification, investigation, apprehension, and prosecution of other persons involved in criminal activity, and the prosecutor represents on the record, either in camera or in open court, that the plea agreement is essential to assure the defendant's or juvenile's cooperation with the prosecution. Any such cooperation agreement shall comply with the provisions of § 6 of this Directive.

6. *Written Cooperation Agreements.*

All plea agreements that are offered in exchange for a defendant's promise to provide future cooperation shall be in writing and shall set forth the reasonable expectations and obligations of both the defendant and the state in sufficient detail so that those expectations and agreed-upon responsibilities are clearly understood and can be reviewed upon request by the Division of Criminal Justice and enforced by a court if necessary. In addition, the cooperation agreement must be approved by a designated senior assistant prosecutor who is authorized in writing by the county prosecutor to approve such agreements, or in cases prosecuted by the Division of Criminal Justice, by a designated assistant or deputy attorney general authorized in writing by the Director of the Division of Criminal Justice to approve such agreements. Where the case involves a charge that carries a mandatory term of imprisonment and parole ineligibility that is subject to waiver pursuant to N.J.S.A. 2C:35-12, the cooperation agreement shall comply with the policies, criteria, and procedures established in Part X of the Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12. Any cooperation agreement and arrangement with a juvenile shall also comply with the Attorney General's Law Enforcement Guidelines on the Use of Juveniles as Informants, reprinted as § 3 of the New Jersey Law Enforcement Officers' Reference Manual: Handling Juvenile Offenders or Juveniles Involved in a Family Crisis.

7. *Breach of Conditional Agreements.*

In the event that the defendant violates the terms of a conditional plea agreement, the prosecutor shall determine whether the violation constitutes a material breach of the agreement in the context of all of the circumstances, including the extent of any partial performance by the defendant, either in testifying in other cases, providing information useful to the prosecutor, or participating in rehabilitative activities pursuant to the agreement. In the event of a material breach, the prosecutor may retract the waiver offer. The prosecutor should be prepared at any resulting hearing to rebut any contention by defendant that he or she has a justifiable excuse or explanation entitling defendant to specific performance of the waiver offer.

8. *No Appearance Agreements.*

A plea agreement may include conditions that a defendant admitted to bail or R.O.R. following entry of a plea of guilty and pending sentencing is responsible to appear voluntarily for bail unit supervision, including drug testing, that the defendant not

commit any other offense or criminal acts or be re-arrested before sentencing, and that the defendant appear for sentencing as scheduled as a condition of the prosecutor's consent to bail and agreement to waive a mandatory minimum term of imprisonment.

Notwithstanding the foregoing, any such conditional plea offer should not be routinely given, and the prosecutor must provide reasons for the conditional agreement at the time of the initial plea. See *State v. Shaw*, 131 N.J. 1 (1993). The prosecutor's decision should reflect a consideration of prosecutorial, judicial, and correctional resources, including the amount of resources already expended on the particular case, since one objective of a no appearance agreement is to encourage the early disposition of cases. The prosecutor should carefully consider the potential that the defendant might become a fugitive or present a threat to him/herself or others. Accordingly, these agreements may contain supervisory restrictions on contact with victims, witnesses, or others at risk. It may also contain provisions for the surrender of the defendant's passport and for the waiver of extradition.

9. *Criteria for Admitting Persons Charged With N.J.S.A. 2C:35-7 Into PTI.*

In *State v. Caliguri*, 308 N.J. Super. 214 (App. Div. 1998), the Appellate Division held that although participation in pretrial intervention is presumptively unavailable to a defendant charged with distribution or possession of a controlled substance with intent to distribute while within 1,000 feet of school property, the prosecutor in that case, acting in accordance with the provisions of a prior Attorney General directive, mistakenly denied defendant entry into the program on a categorical basis, without allowing the defendant an opportunity to rebut the presumption. The court rejected the Attorney General's argument that defendants who are subject to a mandatory term of imprisonment and parole ineligibility are ineligible for PTI. The court instead held that the decision regarding participation in PTI is primarily individualistic in nature, and a prosecutor must therefore consider the individual defendant's features that bear on his or her amenability to rehabilitation. The court further explained that a prosecutor is "not without a standard to apply in such a case," adopting a standard based on the presumption of imprisonment established in N.J.S.A. 2C:44-1d that provides that certain offenders must be sentenced to a term of imprisonment unless imprisonment "would be a serious injustice which overrides the need to deter such conduct by others." See also *State v. Jabbour*, 118 N.J. 1 (1990) (holding that the presumption of imprisonment can be overcome only under exceptional circumstances).

Accordingly, and unless and until the Supreme Court reverses the Appellate Division's ruling in State v. Caliguiri, supra, a prosecutor may not categorically deny a defendant's application for PTI, but rather shall consider all of the facts and circumstances deemed to be relevant pursuant to N.J.S.A. 2C:43-12 and the PTI Guidelines reproduced after R. 3:28. The prosecutor shall also consider all applicable facts and circumstances determined to be relevant under the Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12.

Recognizing that lack of uniformity by prosecutors in handling PTI applications in school zone cases would undermine the statewide prosecution policies in the appended Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12 and thus would undermine if not violate the rule established by the New Jersey Supreme Court in State v. Brimage, supra, a prosecutor shall not consent to an application for pretrial intervention for any person charged with a violation of N.J.S.A. 2C:35-7 (Distribution or Possession With Intent to Distribute Within a Drug-Free School Zone) or any second-degree crime under Chapter 35 of Title 2C unless:

a. The prosecutor determines that the proofs available for trial would not sustain a conviction on that charge; or,

b. There are exceptional circumstances pertaining to the offense or the offender that would overcome the presumption that PTI is unavailable, so that the denial of admission to PTI would constitute a serious injustice which overrides the need to deter drug dealing by others. It is expected that this presumption of non-availability would be especially difficult to overcome if the offense involved weapons within the meaning of Part IV of the Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12, or where the defendant would be subject to any of the Special Application and Enhancement Features or any Aggravating Adjustment Factor described in those Attorney General Guidelines.

In balancing and applying the PTI eligibility criteria set forth in N.J.S.A. 2C:43-12, the prosecutor shall not consider the offense defined in N.J.S.A. 2C:35-7, or any other crime defined in Chapter 35 of Title 2C, to be a "victimless offense" within the meaning of N.J.S.A. 2C:43-12a(3). In addition, given the need to send the strongest possible message in order to deter all forms of illicit drug-distribution activities, especially those occurring on or near school grounds or involving a significant (i.e., second degree) quantity of drugs, the prosecutor in formulating his or her recommendation shall consider statutory eligibility criteria #7 ("the needs and interests of the victim

and society”), #14 (“whether or not the crime is of such nature that the value of supervisory treatment would be outweighed by the public need for prosecution”), and #17 (whether or not the harm done to society by abandoning criminal prosecution would outweigh the benefits to society from channelling an offender into a supervisory treatment program”) as militating against the admission to PTI of a person charged with a provable violation of N.J.S.A. 2C:35-7 or any second-degree crime under Chapter 35 of Title 2C.

The Legislature by adoption of N.J.S.A. 2C:35-14 has established a rehabilitation option specifically addressed to the needs of drug-dependent persons who commit an offense under N.J.S.A. 2C:35-7 or an offense under Chapter 35 that is subject to the statutory presumption of imprisonment. Accordingly, and in order to protect public safety, where the defendant is charged with a violation of N.J.S.A. 2C:35-7 or a second-degree crime under Chapter 35 of Title 2C, in addition to considering the foregoing criteria in determining whether to overcome the presumption against admission, a prosecutor shall not consent to the defendant’s application for PTI if the defendant is drug dependent within the meaning of N.J.S.A. 2C:35-2 unless, as a condition of pretrial intervention, the defendant will be admitted to a suitable residential treatment facility for inpatient treatment for a period of not less than six (6) months. Given the limited resources and supervisory capabilities of the PTI program, and the inherent risk of relapse and re-offense, a drug-dependent drug dealer should, in the absence of compelling and extraordinary circumstances, be prosecuted and sentenced pursuant to N.J.S.A. 2C:35-14 and § 12 of this Directive rather than be diverted to PTI.

Where the prosecutor determines to consent to an application for pretrial intervention by a defendant charged with a violation of N.J.S.A. 2C:35-7 or any second-degree crime under Chapter 35 of Title 2C, the prosecutor shall advise the Director of the Division of Criminal Justice in writing of the basis for the decision. If a court admits a defendant charged with a violation of N.J.S.A. 2C:35-7 or a second-degree crime under Chapter 35 of Title 2C into PTI over the prosecutor’s objection, the prosecutor shall appeal the ruling and shall notify the Director of the Division of Criminal Justice.

10. Strict Enforcement of Non-Incarcerative Sanctions in Simple Possession Cases.

It is the policy of this state for drug users and purchasers to be held fully accountable for their offenses. Accordingly:

a. The county prosecutor, or municipal prosecutor in cases heard in Municipal Court, shall seek imposition of the appropriate Drug Enforcement and Demand Reduction Penalty pursuant to N.J.S.A. 2C:35-15 upon conviction, adjudication of delinquency, adjournment of juvenile proceedings pursuant to N.J.S.A. 2A:4A-54b(1), admission into pretrial intervention, or conditional discharge for any offense arising under the Comprehensive Drug Reform Act. The county or municipal prosecutor shall also seek the revocation, suspension, or postponement of driving privileges in all cases where the sanction is required pursuant to N.J.S.A. 2C:35-16. It shall be the responsibility of the county prosecutor to make certain that municipal prosecutors within the county jurisdiction enforce and comply with the requirements of this paragraph.

b. Where an adult or juvenile has committed an offense in violation of N.J.S.A. 2C:35-10 (Use, Simple Possession, or Being Under the Influence of a Controlled Dangerous Substance), the county prosecutor, or municipal prosecutor in cases heard in Municipal Court, shall determine whether such offense occurred on or within 1,000 feet of school property and, in that event, the prosecuting agency shall notify the court of that circumstance prior to trial or the taking of a plea. (Note that pursuant to N.J.S.A. 2C:35-10, an offense committed on or within 1,000 feet of school property is subject to enhanced punishment. However, the location of the offense within a school zone is not a material element of the substantive offense and, therefore, will not be specifically noted in the complaint or indictment.) Furthermore, in the event that the court upon conviction or adjudication of delinquency imposes a noncustodial sentence, the county or municipal prosecutor shall seek to have the defendant or juvenile sentenced to perform not less than 100 hours of community service pursuant to the requirements of N.J.S.A. 2C:35-10. No plea offer shall be tendered by a prosecutor in any case involving a violation of N.J.S.A. 2C:35-10 within a school zone unless the defendant or juvenile is advised on the record of this mandatory, non-incarcerative sanction. It shall be the responsibility of the county prosecutor to make certain that municipal prosecutors within the county jurisdiction enforce and comply with the requirements of this paragraph.

c. A county prosecutor shall not consent to the admission to pretrial intervention or conditional discharge of a person charged with a violation of N.J.S.A. 2C:35-10 (Use, Simple Possession, or Being Under the Influence of a Controlled Dangerous Substance) where the offense occurred on or within 1,000 feet of school property unless, as a condition of pretrial intervention or conditional discharge, the defendant will serve not less than 100 hours of community service and the person will pay a Drug Enforcement and Demand Reduction Penalty appropriate to the degree of the offense charged. It shall be the responsibility of the county prosecutor to make certain that municipal prosecutors within the county jurisdiction enforce and comply with the requirements of this paragraph.

11. Prosecution of Juveniles Charged With Drug Offenses.

a. Recent studies suggest that the drug problem has worsened among school-aged children. In order to reverse this disturbing trend, it shall be the prosecutor's responsibility to deter drug offenses by sending the strongest possible message that there are serious legal consequences for engaging in this form of criminal behavior and that the law enforcement community is committed to making certain that juvenile drug offenders will be held accountable through the imposition of the mandatory non-incarcerative sanctions prescribed in the Comprehensive Drug Reform Act. The general and special deterrent effect of these sanctions would be seriously eroded if juveniles taken into custody for provable drug offenses were to report to their classmates and friends that these sanctions were not imposed. Moreover, it is contrary to public policy and the clearly-expressed intention of the Legislature to foster the appearance that a juvenile is entitled to one "free" drug offense before the statutorily-mandated non-incarcerative sanctions will actually be imposed. Accordingly, where a juvenile is charged with or taken into custody for any offense defined in Chapters 35 or 36 of Title 2C, the prosecutor shall object to the case being diverted to a Juvenile Conference Committee, Intake Services Conference, Juvenile-Family Crisis Intervention Unit, or any other diversion program, unless: (1) the prosecutor determines that the proofs available for trial would not sustain an adjudication of delinquency on that charge, or (2) as a condition of such diversion, the juvenile's driving privileges will be suspended or postponed for not less than six (6) months, and the juvenile will be required to pay a Drug Enforcement and Demand Reduction Penalty appropriate to the degree of the offense charged, and to perform at least 100 hours of community service if the offense occurred on or within 1,000 feet of a school.

b. Prosecutors handling juvenile matters shall comply with the requirements of § 5 of this Directive (imposing limits on the use of a conspiracy charge).

c. Where formal entry of disposition of a case is adjourned pursuant to N.J.S.A. 2A:4A-43b(1), the prosecutor shall seek imposition of the applicable Drug Enforcement and Demand Reduction Penalty and shall seek to have the court require the juvenile to perform not less than 100 hours of community service if the offense occurred on or within 1,000 feet of a school.

12. Drug Courts and Rehabilitative Programs.

a. The Governor's Drug Enforcement, Education, and Awareness Program and Attorney General's Report on the Need to Update the Comprehensive Drug Reform Act support the establishment of "drug court" programs, provided that such programs are designed, first and foremost, to protect public safety. Accordingly, and notwithstanding any other provision of this Directive or the appended Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12, a county prosecutor may agree to a person's application to be sentenced to treatment in lieu of an otherwise mandatory term of imprisonment pursuant to N.J.S.A. 2C:35-14, but only if all of the following conditions are met:

- i. The prosecutor is satisfied that the defendant is a drug-dependent person within the meaning of the Comprehensive Drug Reform Act and was drug dependent at the time of the commission of the present offense;
- ii. The prosecutor is satisfied that the present offense was committed while the defendant was under the influence of a controlled dangerous substance or was committed to acquire property or monies in order to support the defendant's drug dependency;
- iii. The prosecutor is satisfied that substance abuse treatment and monitoring will serve to benefit the defendant by addressing his or her dependency and will thereby reduce the likelihood that he or shall will thereafter commit another offense;
- iv. The prosecutor is satisfied that the defendant has demonstrated amenability to correcting his or her drug dependency;

- v. The defendant did not possess a firearm at the time of the offense and did not possess a firearm at the time of any pending criminal charge;
- vi. The offense did not involve the distribution or the conspiracy or attempt to distribute a controlled dangerous substance or a controlled substance analog to a juvenile, and did not occur on school property;
- vii. The defendant has not been previously convicted of and does not have a pending charge of murder, aggravated manslaughter, robbery, kidnaping, aggravated assault, aggravated sexual assault, or sexual assault;
- viii. The defendant is not a high-ranking member of a drug trafficking network;
- ix. The prosecutor is satisfied that no danger to the community will result from the defendant being sentenced pursuant to N.J.S.A. 2C:35-14; and,
- x. The defendant has specifically identified a suitable residential treatment facility that has agreed to admit the defendant for inpatient treatment for a period of not less than six (6) consecutive months.

b. Each county prosecutor shall designate one or more senior assistant prosecutors who will be responsible for reviewing and approving all applications under N.J.S.A. 2C:35-14. Such assistant prosecutor(s) shall develop sufficient expertise in the handling of drug-dependent offenders and shall become familiar with local drug treatment programs and residential facilities to which persons may be sentenced pursuant to that statute.

c. The prosecutor shall not waive the statutory requirement that certain persons sentenced pursuant to N.J.S.A. 2C:35-14 be committed to the custody of a residential treatment facility for a minimum of six (6) months.

d. A prosecutor's participation in a drug court program shall be contingent upon strict compliance with the requirements of this Directive.

13. Notification of Adverse Rulings to the Division of Criminal Justice.

a. If a court rules that any provision of the Comprehensive Drug Reform Act, this Directive, or the appended Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12 is unconstitutional or otherwise void, invalid, or unenforce-

able, the prosecuting agency shall immediately notify the Division of Criminal Justice.

b. If a court for any reason does not impose a term of incarceration, term of residential (inpatient) treatment, or non-incarcerative sanction that is required to be imposed pursuant to any provision of the Comprehensive Drug Reform Act, the county prosecutor, or municipal prosecutor in cases heard in Municipal Court, shall appeal the court's decision and shall seek to say the imposition of the sentence or disposition in order to permit the appeal. In addition, the prosecuting agency shall immediately notify the Division of Criminal Justice.

14. Supersedure of Prior Directives and Guidelines.

This Directive supersedes all previous Attorney General directives and guidelines for prosecuting cases under the Comprehensive Drug Reform Act, and such prior directives and guidelines are hereby repealed to the extent that they are inconsistent with the provisions of this Directive and the appended Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12. Notwithstanding the foregoing, provisions of this Directive not inconsistent with those of prior directives and guidelines shall be construed as a continuation of such prior directives and guidelines.

15. Transitional Cases Where No Pre-Indictment Plea Offer Was Tendered.

Notwithstanding the provisions of Part II, § E of the appended Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12, where the prosecutor for any reason did not tender a plea offer prior to the return of an indictment in any pending case involving an offense that carries a mandatory term of imprisonment and parole ineligibility subject to the waiver provisions of N.J.S.A. 2C:35-12, the prosecutor shall, at the defendant's request if such request is made within thirty (30) days of the effective date of this Directive, tender the applicable *pre*-indictment plea offer determined pursuant to the appended Attorney General Guidelines, notwithstanding that the defendant has already been indicted, and notwithstanding that more than seventy-five (75) days has elapsed since the defendant's arrest, provided that the defendant pleads guilty or indicates in writing a willingness to accept the prosecutor's plea offer within thirty (30) days of receiving the offer from the prosecutor pursuant to this paragraph. The provisions of this paragraph that permit a defendant to request the functional equivalent of a pre-indictment plea offer determined in accordance with the provisions of the appended Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12 shall expire thirty (30) days after the effective date of this Directive.

16. Effective Date.

This Directive and the appended Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-1 shall take effect on May 20, 1998 and shall apply to all pending cases, except that in the interest of promoting an orderly and efficient transition to the new plea negotiation scheme established in the appended Guidelines, any plea offer tendered by a prosecutor to a defendant on or before the effective date of this Directive and in accordance with the provisions of prior directives and guidelines may be accepted by the defendant, and need not be withdrawn or rejected by the prosecutor, notwithstanding that such offer would not comply with the provisions of this Directive and the appended Attorney General Guidelines, provided that the defendant pleads guilty or indicates in writing a willingness to accept the previously-tendered plea offer within thirty (30) days of the effective date of this Directive, and further provided that the prosecutor at or before the plea hearing alerts the court that the plea offer does not comport with the requirements of the appended Guidelines so that the court can decide pursuant to State v. Brimage, 153 N.J. 1 (1998) and R. 3:9-3(d) whether to accept, reject, or vacate the plea on the grounds that the interests of justice would not be served by effectuating the agreement reached by the prosecutor and defense counsel.

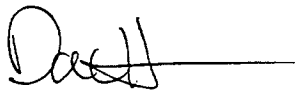
This Directive shall remain in effect until such time as it may be revised or repealed by the Attorney General.

GIVEN under my hand and seal this
fourteenth day of May, in the year of our Lord,
one thousand nine hundred and ninety-eight,
and of the Independence of the United States,
the two hundred and twenty-first.



Peter Verniero
Attorney General

ATTEST:



David C. Hespe
First Assistant Attorney General