

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 3:25. DISMISSAL

Rule 3:25-1. Upon Motion of the Prosecutor Before or During Trial

(a) Pre-Indictment. A complaint may be administratively dismissed by the prosecutor without presentation to the grand jury, in which event said prosecutor shall report the dismissal and the basis therefor to the Assignment Judge and shall notify the defendant.

(b) Post-Indictment. Upon motion by the prosecuting attorney, an indictment, accusation or complaint, or any count thereof, may be dismissed prior to trial by order of the judge to whom the same has been assigned for trial. During trial an indictment or accusation, or any count thereof may be dismissed by the trial judge on motion by the prosecuting attorney with the consent of the defendant.

Note: Source -- R.R. 3:11-3(a); amended July 17, 1975 to be effective September 8, 1975, amended July 29, 1977 to be effective September, 1977; caption amended, captions added and former text amended and redesignated paragraphs (a) and (b) July 13, 1994 to be effective January 1, 1995.

Rule 3:25-2. Order for Trial

A defendant who has remained in custody awaiting trial on an indictment for at least 90 consecutive days after the return of that indictment may move for a trial date. The motion shall be on notice to the prosecutor and shall be accompanied by a certification that the defense is ready to proceed to trial. The court shall, after affording the prosecutor an opportunity to be heard, fix a date for trial. In the event the prosecutor is unable to proceed on the trial date, the court shall take such action and enter such orders as the interest of justice requires, which may include pretrial release.

Note: Source -- R.R. 3:11-3(b); amended July 17, 1975 to be effective September 8, 1975; former Rule redesignated paragraph (a) and paragraph (b) adopted November 2, 1987 to be effective January 1, 1988; paragraph (a) deleted, paragraph (b) amended and paragraph designation removed July 13, 1994 to be effective January 1, 1995; amended July 28, 2017 to be effective September 1, 2017.

Rule 3:25-3. Dismissal for Delay

If there is an unreasonable delay in presenting the charge to a grand jury or in filing an accusation against a defendant who has been held to answer upon a complaint, the Assignment Judge, or the Assignment Judge's designee, may dismiss the matter sua sponte or on motion of the defendant. If there is unreasonable delay in the disposition of an indictment or accusation, the judge to whom the case has been assigned may dismiss the matter sua sponte or on motion of the defendant.

Note: Source -- R.R. 3:11-3(c); amended July 17, 1975 to be effective September 8, 1975; amended July 13, 1994 to be effective January 1, 1995; amended July 12, 2002 to be effective September 3, 2002.

Rule 3:25-4. Speedy Trial for Certain Defendants

(a) Eligible Defendant. For purposes of this rule, the term "defendant" or "eligible defendant" shall mean a person for whom a complaint-warrant or warrant on indictment was issued for an initial charge involving an indictable offense or a disorderly persons offense and who: (1) is detained pursuant to R. 3:4A or R. 3:26-2(d)(1), or (2) is detained in jail due to an inability to post monetary bail pursuant to R. 3:26. A defendant who is the subject of a warrant on indictment is an eligible defendant pursuant to N.J.S.A. 2A:162-15 et seq. This rule only applies to an eligible defendant who is arrested on or after January 1, 2017, regardless of whether the crime or offense related to the arrest was allegedly committed before, on, or after January 1, 2017. For defendants who are detained only for a disorderly persons offense, the limits on pretrial incarceration are governed by R. 7:8-11.

(b) On Failure to Indict.

(1) Time Period. Except as provided in paragraph (d), prior to the return of an indictment, an eligible defendant shall not remain detained in jail for more than 90 days following the date of the defendant's commitment to the county jail pursuant to R. 3:4-1(a)(2) or (b) or R. 3:26-2(d)(1) not counting excludable time as set forth in paragraph (i) of this rule.

(2) Motion by the Prosecutor to Extend Time for Failure to Indict. If the eligible defendant is not indicted within the time frame calculated pursuant to subparagraph (b)(1) of this rule, the eligible defendant shall be released from jail unless on motion of the prosecutor, the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the defendant's release from custody, so that no appropriate conditions for the defendant's release could reasonably address that risk, and also finds that the failure to indict the defendant in accordance with the time requirement set forth in this rule was not due to unreasonable delay by the prosecutor. The prosecutor must file a notice of motion accompanied by a brief with an explanation of the reasons for the delay that justify the extension of time for return of the indictment. The motion to extend the time to return an indictment shall be filed with the court and served upon the defendant and defense counsel by the prosecutor no later than 15 calendar days prior to the expiration of the 90 day time frame, adjusted for excludable time, calculated pursuant to paragraph (b)(1) of this rule. Upon good cause shown this deadline may be relaxed.

(3) Objection by Defendant. Within 5 calendar days of the receipt of the prosecutor's motion to extend the time to return an indictment, the defendant may file an objection to the prosecutor's motion and request oral argument. If the court decides to hold oral argument the argument must be held within 5 calendar days of the defendant's request.

(4) Court Determination.

(A) The court shall consider and render a decision on the prosecutor's motion to extend the time to return an indictment and any objections filed by the defendant within 5 calendar days of the prosecutor's motion, defendant's objection, or oral argument, whichever is later. The court may, in its discretion, render a decision on the papers without the need for oral argument.

(B) Upon consideration of the motion, if the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result, and also finds that the failure to indict the eligible defendant in accordance with the time requirement calculated pursuant to paragraph (b)(1) of this rule was not due to unreasonable delay by the prosecutor, the court may allocate an additional period of time, not to exceed 45 days, in which the return of an indictment shall occur.

(C) If the court orders an eligible defendant detained pursuant to R. 3:4A or R. 3:26-2(d)(1) and the maximum period of detention is reached or if the court currently does not find a substantial and unjustifiable risk or finds unreasonable delay by the prosecutor as described in this rule, the court shall establish conditions of pretrial release, pursuant to R. 3:26, and release the defendant.

(c) On Failure to Commence Trial.

(1) Time Period. Except as provided in paragraph (d), an eligible defendant who has been indicted shall not remain detained in jail for more than 180 days on that charge following the return or unsealing of the indictment or the detention of the eligible defendant pursuant to R. 3:26-2(d)(1), whichever is later, not counting excludable time as set forth in paragraph (i) of this rule, before commencement of the trial. For an eligible defendant whose most serious charge is a disorderly persons offense, the time period shall begin with the defendant's initial detention. See R. 7:8-11.

(2) Motion by the Prosecutor. If the trial does not commence within the time frame calculated pursuant to paragraph (c)(1) of this rule, the eligible defendant shall be released from jail unless, on motion of the prosecutor, the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the defendant's release from custody, so that no appropriate conditions for the defendant's release could reasonably address that risk, and also finds that the failure to commence trial in accordance with the time requirement set forth in this rule was not due to unreasonable delay by the prosecutor. The prosecutor must file a notice of motion accompanied by a brief explaining the reasons for the delay that justify the extension of time to commence trial. The motion to extend time to commence trial shall be filed with the court and served upon the defendant and defense counsel by the prosecutor no later than 15 calendar days prior to the date of the expiration of the 180 day time frame, adjusted for excludable time, calculated pursuant to subparagraph (c)(1) of this rule. Upon good cause shown this deadline may be relaxed.

(3) Objection by Defendant. Within 5 calendar days of the receipt of the prosecutor's motion to extend the time to commence trial, the defendant may file an objection to the prosecutor's motion and request oral argument. If the court decides to hold oral argument the argument must be held within 5 calendar days of the defendant's request.

(4) Court Determination.

(A) The court shall consider and render a decision on the prosecutor's motion to extend the time to commence trial and any objection filed by the defendant within 5 calendar days of the prosecutor's motion, the defendant's objection, or oral argument, whichever is later. The court may, in its discretion, render a decision on the papers without the need for oral argument.

(B) Upon consideration of the motion, if the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result, and also finds that the failure to commence trial in accordance with the time requirement calculated pursuant to paragraph (c)(1) of this rule was not due to unreasonable delay by the prosecutor, the court may allocate an additional period of time of no more than 60 days in which the defendant's trial shall commence. If exceptional circumstances are shown, the court may allocate an additional reasonable period of time to commence trial. If the court allocates any additional time, the court should specify its reasons for granting the extension and set forth a specific date for the trial.

(C) If the court orders an eligible defendant detained pursuant to R. 3:4A or R. 3:26-2(d)(1) and the maximum period of detention is reached, or if the court currently does not find a substantial and unjustifiable risk or finds unreasonable delay by the prosecutor as described in this rule, the court shall establish conditions of pretrial release, pursuant to R. 3:26, and release the defendant.

(d) Period to Readiness of Prosecutor for Trial.

(1) An eligible defendant shall be released from jail upon conditions set by the court, after a release hearing if, excluding any delays attributable to the defendant, two years after the court's issuance of the pretrial detention order pursuant to R. 3:4A or R. 3:26-2(d)(1) for the eligible defendant or after the detention of the eligible defendant in jail due to an inability to post monetary bail as a condition of release, the prosecutor is not ready to proceed to voir dire or to opening argument, or to proceed to the hearing of any motions that had been reserved for the time of trial. In the case of an eligible defendant whose most serious charge is a fourth-degree offense, the maximum time period for the defendant's incarceration shall be 18 months. In the case of an eligible defendant whose most serious charge is a disorderly persons offense, the maximum time period for the defendant's incarceration shall be six months. See R. 7:8-11.

(2) A delay shall be considered attributable to the defendant if the delay constitutes excluded time pursuant to:

(A) subparagraph (1) of paragraph (i) of this rule, but only if the defendant maintains that he or she is not competent to stand trial or is incapacitated;

(B) subparagraph (2) of paragraph (i) of this rule;

(C) subparagraph (3) of paragraph (i) of this rule, but only if the defendant filed the motion unless the motion was filed in response to unreasonable actions of the prosecutor;

(D) subparagraph (4) of paragraph (i) of this rule, but only if the request for the continuance was made by the defendant unless the request was made in response to unreasonable actions by the prosecutor;

(E) subparagraph (5) of paragraph (i) of this rule, but only if the defendant left the jurisdiction after receiving notice of a charge or charges in this jurisdiction;

(F) subparagraph (9) of paragraph (i) of this rule;

(G) subparagraph (11) of paragraph (i) of this rule; or

(H) subparagraph (12) of paragraph (i) of this rule, but only if the delay resulted from unreasonable acts or omissions of the defendant.

(3) An eligible defendant shall not be released from jail pursuant to subparagraph (1) of this paragraph if, on or before the expiration of the applicable period of detention, the prosecutor has represented that the State is ready to proceed to voir dire or to opening arguments, or to proceed to the hearing of any motions that had been reserved for trial. The prosecutor's statement of readiness shall be made on the record in open court or in writing.

(e) Commencement of Trial. For the purposes of this rule, a trial is considered to have commenced when the court determines that the parties are present and directs them to proceed to voir dire or to opening argument, or to the hearing of any motions that had been reserved for the time of trial.

(f) Subsequent and Superseding Indictments. For purposes of calculating the time period pursuant to paragraph (c)(1) of this rule, the return of a superseding indictment against the defendant shall extend the time for the trial to commence. The court shall schedule the trial to commence as soon as reasonably practicable taking into consideration the nature and extent of differences between the superseded and superseding indictments, including the degree to which the superseding indictment is based on information that was available at the time of the original indictment or that could have been obtained through reasonably diligent efforts at the time of the original indictment. If an indictment is dismissed without prejudice upon motion of the defendant for any reason, and a subsequent indictment is returned, the time for trial shall begin running from the date of the return of the subsequent indictment.

(g) New Trial. A trial ordered after a mistrial or upon a motion for a new trial,

pursuant to R. 3:20-1, shall commence within 120 days of the entry of the order of the court. A trial ordered upon the reversal of a judgment by any appellate court shall commence within 120 days of the service of that court's trial mandate.

(h) Charge or Indictment in Another Matter. If the defendant is charged or indicted in another matter that results in the defendant's pretrial detention, the time calculations set forth in this rule shall run independently for each matter.

(i) Excludable Time Criteria. The following periods shall be excluded in computing the time in which a case shall be indicted or tried:

(1) The time resulting from an examination and hearing on competency and the period during which the defendant is incompetent to stand trial or incapacitated. Excluded time shall begin tolling once the judge signs an order for the examination of the defendant for competency pursuant to N.J.S. 2C:4-5, or once the defense serves the court with a report from its own expert stating that the defendant is not competent to proceed;

(2) The time from the filing to the disposition of a defendant's application for supervisory treatment pursuant to N.J.S. 2C:36A-1 or N.J.S. 2C:43-12 et seq., special probation pursuant to N.J.S. 2C:35-14, drug or alcohol treatment as a condition of probation pursuant to N.J.S. 2C:45-1, or other pretrial treatment or supervisory program;

(3) The time resulting from the filing of a motion by either the prosecution or defendant subject to the following:

(A) If briefing, argument, and any evidentiary hearings required to complete the record are not complete within 60 days of the filing of the notice of motion, or within any longer period of time authorized pursuant to R. 3:10-2(f), any additional time shall not be excluded.

(B) Unless the court reserves its decision until the time of trial, if the court does not decide the motion within 30 days after the record is complete, any additional time during which the motion is under advisement by the court shall not be excluded unless the court finds there are extraordinary circumstances affecting the court's ability to decide the motion, in which case no more than an additional 30 days shall be excluded.

(C) If the court reserves its decision on a motion until the time of trial, the time from the reservation to disposition of that motion shall not be excluded. When the court reserves a motion for the time of trial, the court will be obligated to proceed directly to voir dire or to opening statements after the disposition of the motion.

(4) The time resulting from a continuance granted at the defendant's request or at the request of both the defendant and the prosecutor; such request must specify the amount of time for which the continuance is sought;

(5) The time resulting from the detention of the defendant in another jurisdiction, provided the prosecutor has been diligent and has made reasonable efforts to obtain the defendant's presence;

(6) The time resulting from exceptional circumstances including, but not limited to, a natural disaster, the unavoidable unavailability of the defendant, material witness or other evidence, when there is a reasonable expectation that the defendant, witness or evidence will become available in the near future;

(7) On motion of the prosecutor, the delay resulting when the court finds that the case is complex due to the number of defendants or the nature of the prosecution subject to the following:

(A) the prosecutor shall include in the motion the specific factual basis justifying the delay and the length of the delay sought; the defendant may file an objection within five calendar days of receipt of the prosecutor's motion; and the court may decide the motion without oral argument;

(B) the court shall grant the motion only if (i) the prosecutor establishes that due to the complexity of the case it is unreasonable to expect adequate preparation for pretrial proceedings or the trial itself within the time periods set forth in this Rule and (ii) the court finds that the interests of justice served by granting the delay outweigh the best interests of the public and the defendant in a speedy trial;

(C) the court ordinarily should grant the motion only when the case involves more than two defendants, novel questions of fact or law, numerous witnesses who may be difficult to locate or produce, or voluminous or complicated evidence;

(D) if the court grants the motion, the court shall specify the period of delay and shall set forth on the record, either orally or in writing, its findings as required under subparagraph (7)(B)(ii); and

(E) the court may grant the motion only with the approval of the criminal presiding judge.

(8) The time resulting from a severance of codefendants when that severance permits only one trial to commence within the time period for trial set forth in this Rule, subject to the following:

(A) except as provided in subparagraph (8)(B), the subsequent trial shall commence within 60 days of the conclusion of the previous trial;

(B) the court may extend the date for the commencement of the subsequent trial upon the request of the defendant, the defendant's consent to a request by the prosecutor, or a finding by the court upon motion of the prosecutor that there is good cause for the extension; and

(C) if the subsequent trial does not commence within 60 days or, if

applicable, within the extended period, any additional time shall not be excluded.

(9) The time resulting from a defendant's failure to appear for a court proceeding;

(10) The time resulting from a disqualification or recusal of a judge, provided that the amount of excluded time under this subparagraph shall not exceed 30 days;

(11) The time resulting from a failure by the defendant to provide timely and complete discovery;

(12) The time for other periods of delay not specifically enumerated if the court finds good cause for the delay, provided that this provision shall be narrowly construed; and

(13) Any other time otherwise required by statute.

The failure by the prosecutor to provide timely and complete discovery shall not be considered excludable time unless the discovery only became available after the time established for discovery.

(j) Excludable Time Calculations. The court shall keep track of each and every instance of excludable time calculated pursuant to this rule, including the number of days excluded as determined by the judge, and ensure that all excludable time is accurately reflected in an appropriate judiciary case management system. The court shall provide notice to the defendant and prosecutor of the impending release date for the defendant at least 20 days prior to that release date. Counsel shall also keep track of excludable time and the pending release dates for an eligible defendant.

Note: Adopted August 30, 2016 to be effective January 1, 2017; paragraphs (a), (c)(1), and (d)(1) amended November 14, 2016 to be effective January 1, 2017; paragraphs (a), (b)(4)(C), (c)(1), (c)(4)(C), and (d)(1) amended December 13, 2016 to be effective January 1, 2017; paragraph (a) amended July 28, 2017 to be effective September 1, 2017.