

**RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY**  
**RULE 5:21. CUSTODY, PRETRIAL DETENTION**

**Rule 5:21-1. Taking into custody, initial procedure**

A law enforcement officer may take into custody without process a juvenile who the officer has probable cause to believe is delinquent as defined by N.J.S. 2A:4A-23. When a juvenile has been taken into custody for delinquency, a complaint, if not already filed, shall immediately be filed as provided by R. 5:20-1. The taking of a juvenile into custody shall not be construed as an arrest but shall be deemed a measure to protect the health, morals and well-being of the juvenile, and the person taking the juvenile into custody shall immediately notify the juvenile's parents, guardian or other custodian.

**Note:** Source-R. (1969) 5:8-2(a) (first and second sentence), (e). Adopted December 20, 1983, to be effective December 31, 1983; amended July 13, 1994 to be effective September 1, 1994.

**Rule 5:21-2. Release**

(a) Pre-hearing Release. Whenever it will not adversely affect the health, safety or welfare of a juvenile, the juvenile shall be released pending disposition to an authorized person or agency upon written assurance that such person or agency shall assume responsibility for the juvenile subject to conditions which may be imposed by the court and shall bring the juvenile before the court at all scheduled hearings or as otherwise ordered. In any event no juvenile shall be placed in detention without the permission of a judge or the court intake service.

(b) Judicial Release. At any time between the filing of the complaint and the disposition, the judge may order the release of any juvenile from detention or shelter care facility and fix the terms of such release pursuant to N.J.S. 2A:4A-34(d).

(c) Release on Own Recognizance. A law enforcement officer may and the judge or court intake officer shall, where appropriate, release the juvenile on his or her own recognizance on terms and conditions prescribed if: (a) The nature of the offense charged is such that the juvenile's release would not constitute a danger to the community; (b) There is no parent, guardian or other appropriate adult custodian to whom the juvenile could be released and all reasonable measures have been exhausted by either police or court personnel to locate and contact any such person; (c) The juvenile is at least 14 years of age; (d) The identity and address of the juvenile are verified; and (e) Reasonable certainty exists on the part of the releasing authority that upon release, the juvenile will return to school or home safely and will appear at the hearing.

**Note:** Source-R. (1969) 5:8-2(a) and (d) (third and fourth sentence), R. (1969) 5:8-6(b). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 13, 1994 to be effective September 1, 1994.

### **Rule 5:21-3. Detention hearings**

(a) Initial Detention Hearing. If the juvenile has not been released pursuant to R. 5:21-2, an initial hearing to determine whether pretrial detention is required pursuant to the standards of R. 5:21-5 shall be held no later than the morning following the juvenile's placement in custody, including holidays and weekends. Said hearing shall be on oral or written notice to the juvenile and the juvenile's parents or guardian, all of whom shall be present at the hearing. The hearing, however, shall not be adjourned if such notice or process fails to produce the attendance of the parents or guardian. If a complaint has not been filed by the time the initial hearing is held, the juvenile shall be immediately released from custody. If the juvenile is not represented by counsel at the initial hearing and if the court determines that the juvenile should be detained, a second detention hearing shall be held within two court days after the initial hearing at which the juvenile shall be represented by assigned or retained counsel or by the Public Defender as the circumstances require.

(b) Probable Cause Hearing. If the juvenile is detained following the initial detention hearing, the court shall conduct a probable cause hearing within two court days after the initial hearing. Where a second detention hearing is required by paragraph (a), it shall be held with the probable cause hearing. If the court determines that there is no probable cause to believe that the juvenile has committed the conduct alleged in the complaint, the juvenile shall be forthwith released. If probable cause is found, detention review hearings shall be conducted as provided in paragraph (c).

(c) Detention Review Hearing. If the court determines that the juvenile should continue to be detained, a detention review hearing shall be held within 14 court days after the prior detention hearing. If detention is again continued, review hearings shall be held thereafter at intervals not to exceed 21 court days. The juvenile shall be represented by counsel at all such hearings.

(d) Findings. Whenever the court places a juvenile in detention, it shall state the reasons therefor on the record, giving consideration to the following factors among others:

- (1) The nature and circumstances of the offense 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.

(e) Credit for Time Served. A juvenile shall receive credit on the term of a custodial sentence for any time served in detention or court-ordered shelter care between apprehension and disposition.

**Note:** Source-R. (1969) 5:8-2(c) and (d); R. (1969) 5:8-6(d). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (e) adopted November 1, 1985 to be effective January 2, 1986; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended August 1, 2016 to be effective September 1, 2016.

#### **Rule 5:21-4. Place of Detention or Shelter Care**

No juvenile shall be placed in detention or shelter care in any place other than that specified by the State Juvenile Justice Commission or Department of Children and Families as provided by law. No juvenile shall be detained or placed in any prison, jail, lockup, or police station. If however, no other facility is reasonably available and if a brief holding is necessary to allow the release of the juvenile to the juvenile's parent, or guardian, or other suitable person, or approved facility, a juvenile may be held in a police station in a place other than one designed for the detention of prisoners and apart from any adult charged with or convicted of crime. Nor shall a juvenile be placed in a detention facility which has reached its maximum population capacity as determined by the Juvenile Justice Commission.

**Note:** Source-R. (1969) 5:8-6(a). Adopted December 20, 1983, to be effective December 31, 1983; amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; amended July 16, 2009 to be effective September 1, 2009.

#### **Rule 5:21-5. Standards for detention**

(a) Juveniles Over the Age of 11. The court shall only order pretrial detention of a juvenile over the age of 11 if it finds, pursuant to subparagraphs (1) and (2) hereof, either that detention is necessary to secure the presence of the juvenile at the next hearing or that the physical safety of persons or property of the community would be seriously threatened if a juvenile, charged with an offense as hereafter set forth, were not detained.

(1) The necessity of detention to secure the presence of a juvenile at the next hearing may be demonstrated by the juvenile's record of recent willful failure to appear at juvenile court proceedings or the juvenile's unauthorized departure from a placement made by the court or the court intake service.

(2) For purposes of this rule a juvenile may be detained to protect the physical safety of persons or property only if the juvenile is charged with an offense which, if committed by an adult, would constitute a crime. If the charge would constitute a repetitive disorderly persons offense, the juveniles shall be detained only if the judge determines that there is a likelihood that upon adjudication of delinquency a custodial disposition will be ordered.

(3) When the criteria for detention are met and the juvenile is charged with an offense which, if committed by an adult, would constitute a disorderly persons or petty

disorderly persons offense, the juvenile may be placed in detention temporarily. Police and court intake personnel shall make all reasonable efforts to locate a parent or guardian to accept custody of the juvenile prior to requesting or approving the juvenile's placement in detention. If, after the initial detention hearing, continued detention is necessary, the juvenile shall not be detained in a secure facility but shall be transferred to a shelter or other non-secure placement.

(b) Juvenile Not Over the Age of 11. The court may order pretrial detention of a juvenile not over the age of 11 only if the juvenile's charged with an offense which, if committed by an adult, would constitute a crime of the first or second degree or arson and provided further that the juvenile otherwise meets either of the detention criteria of paragraph (a) of this rule.

**Note:** Source-R. (1969) 5:8-6(e). Adopted December 20, 1983, to be effective December 31, 1983; paragraphs (a)(1), (a)(2), and (b) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a)(1) and (a)(2) amended and paragraph (a)(3) adopted July 10, 1998 to be effective September 1, 1998.

#### **Rule 5:21-6. Post-complaint detention**

At any time after the filing of a complaint the court may, after a detention or shelter care hearing and pursuant to these rules, direct that a juvenile be placed in an appropriate facility.

**Note:** Source-R. (1969) 5:8-6(c). Adopted December 20, 1983, to be effective December 31, 1983.

#### **Rule 5:21-7. Adjudicatory hearing**

If a juvenile has been detained the adjudicatory hearing shall be held within 30 days after the date of initial detention. If the adjudicatory hearing is not held within said time, the court shall, within 72 hours after a motion by the juvenile so requesting, fix a date certain for the adjudicatory hearing unless an extension is granted by the court for good cause shown. Written notice of any application for a postponement shall be furnished the juvenile's counsel, who shall have a right to be heard on the application.

**Note:** Source-new. Adopted December 20, 1983, to be effective December 31, 1983.

#### **Rule 5:21-8. Custody and detention of material witness**

The judge of the Family Part shall be notified when any juvenile under 18 years of age has been taken into custody or detained as a material witness. The custody and conditions of detention of such juvenile material witness, pending the arraignment and the trial of the adult involved, shall be determined by the court upon notice to the prosecutor

and other proper parties. If a juvenile is held in detention as a material witness, the trial for which the juvenile is held shall be brought on with all possible dispatch. The court may, in a proper case, dismiss a complaint for juvenile delinquency and designate the juvenile a material witness. Insofar as applicable, the provisions of R. 5:21 apply to the detention of a juvenile as a material witness.

**Note:** Source-R. (1969) 5:8-7. Adopted December 20, 1983, to be effective December 31, 1983; amended July 13, 1994 to be effective September 1, 1994.