

**RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY  
RULE 7:4. BAIL**

**7:4-1. Right to Pretrial Release**

**(a) Defendants Charged on Complaint-Warrant (CDR-2) with Disorderly Persons Offenses.** Except as otherwise provided by R. 3:4A (pertaining to preventative detention), defendants charged with a disorderly persons offense on an initial Complaint-Warrant (CDR-2) shall be released before conviction on the least restrictive non-monetary conditions that, in the judgment of the court, will reasonably ensure their presence in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, pursuant to R. 3:26-1(a)(1). In accordance with Part III, monetary bail may be set for a defendant arrested on a disorderly persons offense on an initial Complaint-Warrant (CDR-2) only when it is determined that no other conditions of release will reasonably assure the eligible defendant's appearance in court when required. For these defendants the court shall make a pretrial release determination no later than 48 hours after a defendant's commitment to the county jail; the court shall consider the Pretrial Services Program's risk assessment and recommendations on conditions of release before making a release decision.

**(b) All Other Defendants.** All defendants other than those set forth in paragraph (a) shall have a right to bail before conviction on such terms as, in the judgment of court, will insure the defendant's presence when required, having regard for the defendant's background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detention; in its discretion, the court may order defendant's release on defendant's own recognizance and may impose terms or conditions appropriate to such release. All other defendants include: (i) those charged on an initial Complaint-Warrant (CDR-2) with a petty disorderly persons offense or other non-disorderly persons offense within the jurisdiction of the municipal court, and (ii) all defendants brought before the court on a bench warrant for failure to appear or other violation, including defendants initially charged on a Complaint-Warrant (CDR-2) and those initially charged on a summons. Defendants issued a bench warrant who were charged with a disorderly persons offense on an initial Complaint-Warrant (CDR-2) may also be subject to reconsideration of conditions of release pursuant to Rule 7:4-9.

**(c) Domestic Violence; Conditions of Release.** When a defendant is charged with a crime or offense involving domestic violence, the court authorizing the release may, as a condition of release, prohibit the defendant from having any contact with the victim. The court may impose any additional limitations upon contact as otherwise authorized by N.J.S.A. 2C:25-26.

#### **(d) Issuance of Restraining Orders by Electronic Communication.**

(1) Temporary Domestic Violence Restraining Orders. Procedures authorizing the issuance of temporary domestic violence restraining orders by electronic communication are governed by R. 5:7A(b).

(2) N.J.S.A. 2C:35-5.7 and N.J.S.A. 2C:14-12 Restraining Orders. A judge may as a condition of release issue a restraining order pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") or N.J.S.A. 2C:14-12 ("Nicole's Law") upon sworn oral testimony of a law enforcement officer or prosecuting attorney who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio, or other means of electronic communication. The judge shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine if such are available; otherwise the judge shall make adequate longhand notes summarizing what is said. Subsequent to taking the oath, the law enforcement officer or prosecuting attorney must identify himself or herself, specify the purpose of the request, and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a restraining order. Upon issuance of the restraining order, the judge shall memorialize the specific terms of the order. That memorialization shall be either by means of a tape-recording device, stenographic machine, or by adequate longhand notes. Thereafter, the judge shall direct the law enforcement officer or prosecuting attorney to memorialize the specific terms authorized by the judge on a form, or other appropriate paper, designated as the restraining order. This order shall be deemed a restraining order for the purpose of N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law"). The judge shall direct the law enforcement officer or prosecuting attorney to print the judge's name on the restraining order. A copy of the restraining order shall be served on the defendant by any officer authorized by law. Within 48 hours, the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission, or by other means of electronic communication, the signed restraining order along with a certification of service on the defendant. The certification of service shall be in a form approved by the Administrative Director of the Courts and shall include the date and time that service on the defendant was made or attempted to be made. The judge shall verify the accuracy of these documents by affixing his or her signature to the restraining order.

(3) Certification of Offense Location for Drug Offender Restraining Orders. When a restraining order is issued by electronic communication pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") where the law enforcement officer or prosecuting attorney is not physically present at the same location as the court, the law enforcement officer or prosecuting attorney must provide an oral statement describing the location of the offense. Within 48 hours thereafter the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission, or by other means of electronic communication, a certification describing the location of the offense.

**Note:** Source-R. (1969) 7:5-1, 3:26-1(a). Adopted October 6, 1997 to be effective February 1, 1998.; text designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2013 to be effective September 1, 2013; caption amended, new paragraph (a) adopted, former paragraph (a) redesignated as paragraph (b) and caption and text amended, and former paragraphs (b) and (c) redesignated as paragraphs (c) and (d) August 30, 2016 to be effective January 1, 2017; paragraphs (a) and (b) caption and text amended November 14, 2016 to be effective January 1, 2017.

## **7:4-2. Authority to Set Bail or Conditions of Pretrial Release**

**(a) Authority to Set Initial Conditions of Pretrial Release on Complaint-Warrants (CDR-2) – Disorderly Persons Offenses.** Initial conditions of pretrial release on an initial disorderly persons charge on a Complaint-Warrant (CDR-2) may be set by a judge designated by the Chief Justice, pursuant to R. 3:26 as part of a first appearance at a centralized location, pursuant to R. 3:4-2.

**(b) Authority to Set Bail for Bench Warrants and All Other Matters within the Jurisdiction of the Municipal Court.** Setting bail for bench warrants or for a Complaint-Warrant (CDR-2) in which the most serious charge is a petty disorderly persons offense or other non-disorderly persons offense within the jurisdiction of the Municipal Court may be done by a judge sitting regularly in or as acting or temporary judge of the jurisdiction in which the offense was committed, or by a vicinage Presiding Judge of the Municipal Courts, or as authorized by any other rule of court. In the absence of the judge, and to the extent consistent with N.J.S.A. 2B:12-21 and R. 1:41-3(f), a duly authorized municipal court administrator or deputy court administrator may set bail on defendants issued a bench warrant or a Complaint-Warrant (CDR-2) in which the most serious charge is a petty disorderly persons offense or other non-disorderly persons offense within the jurisdiction of the Municipal Court. The authority of the municipal court administrator, deputy court administrator or other authorized persons shall, however, be exercised only in accordance with bail schedules promulgated by the Administrative Office of the Courts or the municipal court judge.

**(c) Authority to Take a Recognizance.** Any judge who has set bail and/or conditions of pretrial release may designate the taking of the recognizance by the municipal court administrator or any other person authorized by law to take recognizances, other than the law enforcement arresting officer.

**(d) Revisions of Bail or Conditions of Pretrial Release.** A municipal court judge may modify bail or any other condition of pretrial release on any non-indictable offense at any time during the course of the municipal court proceedings, consistent with R. 7:4-9, except as provided by law.

**Note:** Source-Paragraph (a): R. (1969) 7:5-3; paragraph (b): R. (1969) 7:5-1, 3:26-2(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (a) and (b) amended July 10, 1998, to be effective September 1, 1998; caption amended, paragraph (a) caption and text amended and portion redesignated as paragraphs (b) and (c), paragraph (b) redesignated and amended as paragraph (d) August 8, 2016 to be effective January 1, 2017; paragraphs (a) and (b) captions and text amended November 14, 2016 effective January 1, 2017.

### **7:4-3. Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture**

**(a) Deposit of Bail; Execution of Recognizance.** A defendant admitted to bail, shall, together with the sureties, if any, sign and execute a recognizance before the person authorized to take monetary bail or, if the defendant is in custody, the person in charge of the place of confinement. The recognizance shall contain the terms set forth in R. 1:13-3(b) and shall be conditioned upon the defendant's appearance at all stages of the proceedings until the final determination of the matter, unless otherwise ordered by the court. The total recognizance may be satisfied by more than one surety, if necessary. Cash may be accepted, and in proper cases, within the court's discretion, the posting of security may be waived. A corporate surety shall be one approved by the Commissioner of Insurance. A corporate surety shall execute the recognizance under its duly acknowledged corporate seal, and shall attach to its bond written proof of the corporate authority and qualifications of the officers or agents executing the recognizance. Real estate offered as security for bail for non-indictable offenses shall be approved by and deposited with the clerk of the county in which the offense occurred and not with the municipal court administrator. A defendant charged on an initial Complaint-Warrant (CDR-2) with a disorderly persons offense and released on non-monetary conditions shall be released pursuant to the release order prepared by the judge and need not complete a recognizance form.

**(b) Limitation on Individual Surety.** Unless the court for good cause otherwise permits, no surety, other than an approved corporate surety, shall enter into a recognizance if there remains any previous undischarged recognizance or bail that was undertaken by that surety.

**(c) Real Estate in Other Counties.** Real estate owned by a surety located in a county other than the one in which the bail is taken may be accepted, in which case the municipal court administrator of the court in which the bail is taken shall certify and transmit a copy of the recognizance to the clerk of the county in which the real estate is situated, and it shall be there recorded in the same manner as if taken in that county.

**(d) Record of Recognizance.** In municipal court proceedings, the record of the recognizance shall be entered by the municipal court administrator or designee in the manner required by the Administrative Director of the Courts to be maintained for that purpose.

**(e) Record of Discharge; Forfeiture.** When any recognizance shall be discharged by court order on proof of compliance with the conditions thereof or by reason of the judgment in any matter, the municipal court administrator or deputy court administrator shall enter the word "discharged" and the date of discharge at the end of the record of such recognizance. When any recognizance is forfeited, the municipal court administrator or deputy court administrator shall enter the word "forfeited" and the

date of forfeiture at the end of the record of such recognizance and shall give notice of such forfeiture by ordinary mail to the municipal attorney, the defendant and any surety or insurer, bail agent or agency whose names appear in the bail recognizance. Notice to any insurer, bail agent or agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. When real estate of the surety located in a county other than the one in which the bail was taken is affected, the municipal court administrator or deputy court administrator in which such recognizance is given shall immediately send notice of the discharge or forfeiture and the date thereof to the clerk of the county where such real estate is situated, who shall make the appropriate entry at the end of the record of such recognizance.

**(f) Cash Deposit.** When a person other than the defendant deposits cash in lieu of bond, the person making the deposit shall file an affidavit or certification explaining the lawful ownership thereof, and on discharge, such cash shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

**(g) Ten Percent Cash Bail.** Unless otherwise specified in the order setting the bail, bail may be satisfied by the deposit in court of cash in the amount of ten percent of the amount of bail fixed together with defendant's executed recognizance for the remaining ninety percent. No surety shall be required, unless specifically ordered by the court. If a ten percent bail is made by cash owned by one other than the defendant, the owner shall charge no fee for the cash deposited, other than lawful interest, and shall submit an affidavit or certification with the deposit detailing the rate of interest, confirming that no other fee is being charged, and listing the names of any other persons for whom the owner has deposited bail. A person making the ten percent deposit who is not the owner, shall file an affidavit or certification identifying the lawful owner of the cash, and, on discharge, the cash deposit shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

**Note:** Source - R. (1969) 7:5-1, 3:26-4. Adopted October 6, 1997 to be effective February 1, 1998; subsection (e) amended December 8, 1998 to be effective January 15, 1999; caption amended, and paragraphs (e), (f), and (g) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended August 30, 2016 to be effective January 1, 2017; paragraph (a) amended November 14, 2016 to be effective January 1, 2017.

#### **7:4-4. Justification of Sureties**

Every surety, except an approved corporate surety, shall justify the proposed property by affidavit, which shall include a description of the property, any encumbrances, the number and amount of other recognizances and undertakings for bail entered into by the surety and remaining undischarged, if any, and all of the surety's other liabilities. No recognizance shall be approved unless the surety thereon shall be qualified.

**Note:** Source-R. (1969) 7:5-1, 3:26-5. Adopted October 6, 1997 to be effective February 1, 1998.

## 7:4-5. Forfeiture

**(a) Declaration; Notice.** On breach of a condition of a recognizance, the court may forfeit the bail on its own or on the prosecuting attorney's motion. If the court orders bail to be forfeited, the municipal court administrator or deputy court administrator shall immediately forfeit the bail pursuant to R. 7:4-3(e) and shall send notice of the forfeiture by ordinary mail to the municipal attorney, the defendant, and any non-corporate surety or insurer, bail agent, or bail agency whose names appear on the bail recognizance. Notice to any insurer, bail agent, or bail agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. The notice shall direct that judgment will be entered as to any outstanding bail absent a written objection seeking to set aside the forfeiture, which must be filed within 75 days of the date of the notice. The notice shall also advise the insurer that if it fails to satisfy a judgment entered pursuant to paragraph (c) of this rule, and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry. In addition, the bail agent or agency, guarantor, or other person or entity authorized by the insurer to administer or manage its bail bond business in this State who acted in such capacity with respect to the forfeited bond will be precluded, by removal from the Bail Registry, from so acting for any other insurer until the judgment has been satisfied. The court shall not enter judgment until the merits of any objection are determined either on the papers filed or, if the court so orders, for good cause, at a hearing. In the absence of a written objection, judgment shall be entered as provided in paragraph (c) of this rule, but the court may thereafter remit it, in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines.

**(b) Setting Aside.** The court may, upon such conditions as it imposes, direct that an order of forfeiture or judgment be set aside in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines.

**(c) Enforcement; Remission.** If a forfeiture is not set aside or satisfied, the court shall, on motion, enter a judgment of default for any outstanding bail, and execution may issue on the judgment. The time period of 75 days provided for in paragraph (a) of this rule may be extended by the court to permit one stay by consent order of no more than 30 days. Entry of judgment shall follow, unless upon motion to the court a longer period is permitted based upon a finding of exceptional circumstances.

After entry of the judgment, the court may remit the forfeiture in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines.

If, following the court's decision on an objection pursuant to paragraph (a) of this rule, the forfeiture is not set aside or satisfied in whole or in part, the court shall enter judgment for any outstanding bail and, in the absence of satisfaction thereof, execution may issue thereon. Judgments entered pursuant to this rule shall also advise the insurer that if it fails to satisfy a judgment, and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry as provided in paragraph (a) of this rule. A copy of the judgment entered pursuant to this rule is to be served by ordinary mail on the municipal attorney, and on any surety or any insurer, bail agent, or bail agency named in the judgment. Notice to any surety or insurer, bail agent, or bail agency shall be sent to the address recorded in the Bail Registry. In any contested proceeding, the municipal attorney shall appear on behalf of the government. The municipal attorney shall be responsible for the collection of forfeited amounts.

**Note:** Source-R. (1969) 7:5-1, 3:26-6. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) caption and text amended, and paragraphs (b) and (c) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a), (b) and (c) amended July 28, 2017 to be effective September 1, 2017.

#### **7:4-6. Exoneration**

When the condition of the recognizance has been satisfied or its forfeiture has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the recognizance or by a timely surrender of the defendant into custody.

**Note:** Source-R. (1969) 7:5-1, 3:26-7. Adopted October 6, 1997 to be effective February 1, 1998.

#### **7:4-7. Place of Deposit**

Bail in nonindictable matters given in the municipal court shall be deposited with the municipal court administrator or deputy court administrator. At the surety's discretion, bail may also be deposited with the person in charge of the place of confinement where the defendant is in custody, and that person shall then transmit the bail to the appropriate municipal court administrator or deputy court administrator for deposit in accordance with this rule.

**Note:** Source-R. (1969) 7:5-2. Adopted October 6, 1997 to be effective February 1, 1998.

#### **7:4-8. Bail after Conviction**

When a sentence has been imposed and an appeal from the judgment of conviction has been taken, the trial judge may admit the appellant to bail within 20 days

from the date of conviction or sentence, whichever occurs later. Bail after conviction may be imposed only if the trial judge has significant reservations about the appellant's willingness to appear before the appellate court. The bail or other recognizance shall be of sufficient surety to guarantee the appellant's appearance before the appellate court and compliance with the court's judgment. Once the appellant has placed bail or filed a recognizance, if the appellant is in custody, the trial court shall immediately discharge the appellant from custody. The court shall transmit to the vicinage Criminal Division Manager any cash deposit and any recognizance submitted.

**Note:** Source-R. (1969) 7:5-4. Adopted October 6, 1997 to be effective February 1, 1998; amended July 5, 2000 to be effective September 5, 2000.

#### **7:4-9. Changes in Conditions of Release for Defendants Charged on an Initial Complaint-Warrant (CDR-2) on Disorderly Persons Offenses**

**(a) Monetary Bail Reductions.** If a defendant is unable to post monetary bail, the defendant shall have the monetary bail reviewed promptly and may file an application with the court seeking a monetary bail reduction which shall be heard in an expedited manner by a court with jurisdiction over the matter.

**(b) Review of Conditions of Release.** For defendants charged with a disorderly persons offense on an initial Complaint-Warrant (CDR-2) and released pretrial, a judge with jurisdiction over the matter may review the conditions of release on his or her own motion, or upon motion by the prosecutor or the defendant, alleging that there has been a material change in circumstance that necessitates a change in conditions. Upon a finding that there has been a material change in circumstance that necessitates a change in conditions, the judge may set new conditions of release.

**(c) Violations of Conditions of Release.** A judge may impose new conditions of release, including monetary bail, when a defendant charged with a disorderly persons offense and released on an initial Complaint-Warrant (CDR-2) violates a restraining order or condition of release. These conditions should be the least restrictive condition or combination of conditions that the court determines will reasonably assure the eligible defendant's appearance in court when required, protect the safety of any other person or the community, or reasonably assure that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

**(d) Motions for Pretrial Detention.** All prosecutor motions for pretrial detention must be made in Superior Court, in accordance with Rule 3:4A.

**Note:** Adopted August 30, 2016 to be effective January 1, 2017; caption amended and paragraphs (b) and (c) amended November 14, 2016 to be effective January 1, 2017.