WHEREAS, on March 11, 2020, COVID-19 was declared to be a
global pandemic by the World Health Organization; and

WHEREAS, on March 13, 2020, the President of the United States
declared a national emergency pursuant to his constitutional and
statutory powers, including those granted by Sections 201 and 301
of the National Emergencies Act (50 U.S.C. § 1601, et seq.) and
consistent with Section 1135 of the Social Security Act, as amended
(42 U.S.C. § 1320b-5); and

WHEREAS, in light of the dangers posed by COVID-19, the
Governor of New Jersey issued Executive Order No. 103 (2020) on
March 9, 2020, which declared both a Public Health Emergency and
State of Emergency; and

WHEREAS, to further protect the health, safety, and welfare
of New Jersey residents by, among other things, reducing the rate
of community spread of COVID-19, the Governor issued Executive
Order No. 104 (2020) on March 16, 2020, which established statewide
social mitigation strategies for combatting COVID-19 and; and

WHEREAS, as of March 18, 2020, according to the Centers for
Disease Control and Prevention ("CDC"), there were more than
191,000 confirmed cases of COVID-19 worldwide, with over 7,800 of
those cases having resulted in death; and
WHEREAS, as of March 18, 2020, there were more than 7,000 confirmed cases of COVID-19 in the United States, with 97 of those cases having resulted in death; and

WHEREAS, as of March 18, 2020, there were 427 positive cases of COVID-19 in New Jersey, spread across numerous counties; and

WHEREAS, social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease; and

WHEREAS, State and Federal public health experts, including officials at CDC, believe that infections will continue to spread at exponential rates unless aggressive action is taken to minimize person-to-person contacts and to reduce any unnecessary interactions; and

WHEREAS, as of March 15, 2020, the CDC recommends that for the next eight weeks, gatherings of 50 or more people be canceled or postponed throughout the United States; and

WHEREAS, the Governor suspended in-person preschool programs, K-12 education, and in-person instruction at institutions of higher education as part of the State’s mitigation strategy to combat COVID-19 and reduce the rate of community spread; and

WHEREAS, the Governor ordered the suspension of operations at casinos, racetracks, gyms, fitness centers, movie theaters, performing arts centers, other concert venues, nightclubs, and other entertainment centers, which are vital to the economic health
of the State, as part of the State’s mitigation strategy to combat COVID-19 and reduce the rate of community spread; and

WHEREAS, the CDC has advised that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another; and

WHEREAS, as a result, the CDC has recommended that individuals practice “social distancing” to prevent community spread of the virus; and

WHEREAS, the CDC has defined social distancing as the practice of “remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible”; and

WHEREAS, social distancing measures are required for a period of as-yet-undetermined duration, and the COVID-19 outbreak may have significant effects on New Jersey’s criminal justice systems as long as social distancing measures are in place; and

WHEREAS, the risk of infection in jails is extraordinary;¹ and incarcerated people have limited ability to fight the spread

¹Alice Su, Emily Baumbaertner, Los Angeles Times, “They were already in China’s prisons. Now the coronavirus is there, too,” (February 28, 2020) (describing how in China, a country with a significantly lower rate of incarceration than the United States, officials reported that over 500 COVID-19 cases stemmed from prisons in Hubei Province, where the virus originated). Available at https://www.latimes.com/world-nation/story/2020-02-
of any infectious disease because they cannot control the people
with whom they have contact and may not be able to utilize all
recommended preventive health measures, including social
distancing; and

WHEREAS, although jails can take steps to mitigate risk, they
simply cannot eliminate it; ² and

WHEREAS the health and safety of incarcered people,
correctional police officers, and others who work in correctional
facilities is at significant risk during this pandemic, and COVID-
19 is already present in at least one county jail in New Jersey; ³ and

WHEREAS, under New Jersey’s Code of Criminal Justice
sentences to the county jail are generally reserved for people
convicted of crimes of the third-degree or fourth-degree or
disorderly persons or petty disorderly persons offenses, N.J.S.A.
2C:44-1d (presumption of imprisonment for first- and second-degree
crimes); N.J.S.A. 2C:43-2b(2) (allowing a sentence of probation

² See, e.g. Nathalie Baptiste, Mother Jones, “Correctional
Facilities Are the Perfect Incubators for the Coronavirus”
(March 6, 2020). Available at
https://www.motherjones.com/politics/2020/03/correctional-
facilities-are-the-perfect-incubators-for-the-coronavirus/.
³ Edward Edwards, Insider NJ, “Bergen County Jail Corrections
Officer Tests Positive for COVID-19” (March 19, 2020). Available
at https://www.insidernj.com/bergen-county-jail-corrections-
officer-tests-positive-covid-19/.
conditioned on a period of incarceration in the county jail, known as a split sentence); State v. O’Connor, 105 N.J. 399, 407-09 (1987) (explaining that split sentence does not satisfy presumption of incarceration);

IT IS on this ______ day of March, 2020,

ORDERED that the Attorney General, County Prosecutors, Municipal Prosecutors, the Office of the Public Defender, the Association of Criminal Defense Lawyers of New Jersey, the American Civil Liberties Union of New Jersey, and any other interested party should show cause on the ______ day of March, 2020, or as soon thereafter as counsel can be heard, why an Order should not be entered:

A. Immediately releasing any defendant currently serving a county jail sentence as a condition of probation. The custodial portion of the sentence shall either be served at the conclusion of the probationary portion of the sentence or converted into a “time served” condition, at the discretion of the sentencing judge, after input from counsel.

B. Immediately releasing any defendant serving a county jail sentence as a result of a municipal court conviction. The custodial portion of the sentence shall be suspended until the conclusion of the COVID-19
pandemic or deemed satisfied, at the discretion of the sentencing judge, after input from counsel.

C. Granting such other relief as the court deems equitable and just.

And it is further ORDERED that:

Comments or objection to the proposed Order shall be electronically filed on eCourts under the case caption _______ ________________, docket No. ________ ___. Comments or objections may address the Order in general or its application to any specific person or persons.

For the Court,

Chief Justice