

BRIMAGE STANDARDIZED WAIVER PLEA FORM

(Consult Brimage Guidelines 2 for Complete Description of Eligibility Criteria and Conditions)

Defendant Name:	County:	Date:
P/G Number:	Complaint Number:	

Standardized Waiver Offers apply to **preindictment** cases only. Is this a preindictment offer or equivalent? Yes

A. Waiver of Parole Ineligibility (“Flat Offer”) - The prosecutor must be satisfied that **all** of the following eligibility criteria are met (checked “yes”):

1. The most serious Brimage-eligible offense charged is the school zone offense (N.J.S.A. 2C:35-7) involving a third degree (or less) amount of drugs.
1. Yes No
 2. The defendant is not eligible for an extended term of imprisonment pursuant to N.J.S.A. 2C:43-6f by virtue of having previously been convicted of distribution or possession with intent to distribute CDS.
2. Yes No
 3. The defendant has not previously been convicted of a first or second degree crime, a crime of any degree involving the possession of a firearm, or of a third degree crime other than for violation(s) of N.J.S.A. 2C:35-10.
3. Yes No
 4. The defendant has not previously been adjudicated delinquent for an offense that if committed by an adult would constitute a first or second degree crime or a crime of any degree involving the possession of a firearm.
4. Yes No
 5. The defendant at the time of the present offense was not subject to official supervision (parole, probation, ISP, etc.) and has not at any time violated a Drug Offender Restraining Order.
5. Yes No
 6. The current offense was not committed while actually on school grounds.
6. Yes No
 7. The defendant is not eligible for enhanced punishment pursuant to N.J.S.A. 2C:35-8 (distribution to a minor or pregnant female).
7. Yes No
 8. The current offense was not committed while the defendant was knowingly involved in criminal street gang related activity. (“No” selection requires approval by designated supervisor.)
8. Yes No
- Ineligibility authorized by: _____
9. The defendant did not actually or constructively possess a firearm in the present case.
9. Yes No
 10. The defendant has no pending indictable charge involving a weapon or any offense that is subject to the provisions of the No Early Release Act N.J.S.A. 2C:43-7.2.
10. Yes No
 11. The defendant has no pending charge for a violation of N.J.S.A. 2C:29-2b (eluding while operating a motor vehicle).
11. Yes No

Defendant meets all eligibility requirements for a “flat offer” (all “yes” boxes are checked) and is being tendered the following offer:

- Current offense involves less than one ounce of marijuana. Plea offer is 180 days in county jail as a condition of probation.
- Current offense does not involve less than one ounce of marijuana. Plea offer is a term of 3 years imprisonment with the statutorily prescribed term of parole ineligibility waived.

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Defendant Name _____

Promis Number _____

B. Unrestricted Waiver of N.J.S.A. 2C:35-12 (“Open” Offer) - Defendant must meet **all** of the above criteria in Section A and **all** of the following additional criteria:

- 1. The current offense did not involve actual distribution of a controlled substance to a law enforcement officer or to an informant or cooperating witness acting under the direction or at the request of a law enforcement officer. 1. Yes No
- 2. The defendant at the time of the present offense was not on bail or released on personal recognizance while pending disposition of another charge constituting an indictable crime or disorderly persons offense. 2. Yes No
- 3. The defendant at the time of the present offense was less than 26 years of age **or** the current offense involved an aggregate amount of controlled substances less than one-quarter of the amount needed to establish a second-degree crime pursuant to N.J.S.A. 2C:35-5 (e.g., 3.54 grams of heroin, cocaine or methamphetamine; 1.25 lbs of marijuana, etc.). 3. Yes No
- 4. The defendant has not been convicted on two or more separate occasions for a fourth degree crime or a third degree crime defined in N.J.S.A. 2C:35-10. 4. Yes No
- 5. The defendant at the time of arrest did not precipitate a police foot chase by fleeing or attempting to flee. 5. Yes No

Defendant meets all eligibility requirements for an “open offer” (all “yes” boxes are checked) and is to be sentenced at the discretion of the judge. The State waives all authority under N.J.S.A. 2C:35-12, but reserves the right to request the court to impose a State Prison term or a specific county jail term.

Defendant must agree to submit to a drug or alcohol diagnostic assessment unless the court determines there is no basis to order an assessment. (Prosecutor must notify court of the objective basis for this condition.)

Defendant must agree to participate in any drug or alcohol treatment deemed appropriate by the court. (Prosecutor must notify court of the objective basis for this condition.)

Other conditions: _____

Expires On: _____ Completed by: _____

NOTICE: This plea offer is subject to withdrawal and modification based on new information about the offense or defendant, including, but not limited to, defendant’s conduct occurring after this offer was issued (e.g. committing a new offense or failing to appear in court).