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Sent: Thursday, June 23, 2016 1:34 PM
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Subject: Juvenile Prosecutors Leadership Network Public Comments on Report on Juvenile Waiver
Attachments: NJ JPLN COMMENTS ON JUVENILE WAIVER.pdf

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Re: Comments on Juvenile Waiver
Report of the Supreme Court Family Practice Committee on Juvenile Waiver

Dear Judge Grant:

On behalf of the New Jersey Juvenile Prosecutor's Leadership Network (hereinafter JPLN), please accept this correspondence as public comment regarding the proposed Rule changes as suggested in the Supreme Court Family Practice Committee report distributed May 26, 2016.

Members of the JPLN are available to discuss, in detail, the concerns raised with the committee at your next scheduled meeting. On behalf of the JPLN, I can be reached directly at 732.288-7807.

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June 23, 2016

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Dear Judge Grant:

On behalf of the New Jersey Juvenile Prosecutor's Leadership Network (hereinafter JPLN), please accept this correspondence as public comment regarding the proposed Rule changes as suggested in the Supreme Court Family Practice Committee report distributed May 26, 2016.

As a preliminary matter, our review of the proposed report reveals that a current juvenile prosecutor was not, and is not part of the Family Practice Committee. We therefore request that an experienced juvenile prosecutor be nominated to sit on this committee for future Rule changes impacting upon the Juvenile Delinquency docket. As juvenile practice becomes recognized as a specialty area of law, we submit that a juvenile prosecutor is a necessary addition to this committee.

1) Proposed Amendment to Rule 5:21-3(b) - - Detention Hearings

The JPLN disagrees with the committee's proposal to delete the text in R. 5:21-3(b) that relates to waiver. According to the committee this change would "clarify the requirement of two separate probable cause hearings" one for detention and another for waiver. That, however, is not the established state of the law and, in fact, the opposite position has been argued successfully in many of the counties throughout this State.

The law is well-settled, however, in regard to probable cause. Probable cause is well-defined in the waiver context. Our Supreme Court, in State v. J.M., 182 N.J. 402, 417 (2005) held that "[p]robable cause is a well-grounded suspicion or belief that the juvenile committed the alleged crime. The notion that strict adherence to the rules of evidence is not required at the probable cause hearing remains unchanged. Moreover, the nature of the probable cause determination 'does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands, and credibility determinations [will] seldom [be] crucial in

deciding whether the evidence supports a reasonable belief in guilt.'" *Id.* citing Gerstein v. Pugh, 420 U.S. 103, 122 (1975). In fact, the Supreme Court held that "[t]he demands of due process at such a preliminary stage of the proceedings are no more extensive than to afford the accused a fair hearing where he is represented by counsel and has an opportunity to be heard and present evidence." State v. J.M., 182 N.J. 402, 411 (2005). Those are the requirements of probable cause. There is no language that defines probable cause differently for purposes of detention. Therefore, a determination of probable cause is exactly that, regardless of the stage of the proceeding. It would result in judicial inefficiency to conduct a hearing on the identical facts, with the identical parties to establish the identical standard at different times. That presents an undue burden on the witnesses, the State and the Courts. There may be times when it is necessary to conduct separate hearings, however that should be the exception when deemed necessary by the competent courts of this State.

2) Proposed Amendment to Rule 5:22-2. Waiver of Jurisdiction and Referral without the Juvenile's Consent

The JPLN disagrees with removing the language "limited to the issue of probable cause" when discussing the evidence received by the court at the time of the waiver hearing. That is the issue in the case. That is the standard adopted by our Supreme Court on every occasion in which a juvenile waiver matter was presented. And that is the standard established by the new waiver law. As highlighted above, the definition of probable cause is well-established. That is not in dispute. Therefore, why would a court take testimony regarding some other issue? There is no other issue for which testimony would be relevant. According to the New Jersey Rules of Evidence, evidence must be "relevant" to be admitted before a court. In fact, relevancy is the "hallmark of admissibility". State v. Gookins, 263 N.J. Super. 58, 63 (App. Div. 1993).

According to New Jersey Evidence Rule 401, "relevant evidence" means evidence having a tendency in reason to prove or disprove a fact ***and*** the fact to be proved or disproved must be a fact of consequence in the matter. *See* State v. Burr, 195 N.J. 119, 127 (2008); Marsh v. Newark Heating, & c., Machine Co., 57 N.L.J. 36, 42 (Sup. Ct. 1894). There is no court that accepts evidence irrelevant to an issue before it, nor should it. *See* State v. Muhammad, 366 N.J. Super. 185, 202-203, 205 (App. Div. 2004). Pursuant to N.J.S.A. 2A:4A-26.1, rehabilitation is no longer a factor to be considered. Therefore, testimony presented outside the only relevant issue; probable cause, should not be admitted pursuant to our Rules of Court.

3) Rule 5:22-4 and the Creation of New Rule 5:22-5

The JPLN objects to both of these proposed rules for an identical reason. These provisions do not distinguish between those juveniles waived voluntarily pursuant to R. 5:22-1 or involuntary pursuant to R. 5:22-2. However a distinction must be made. The new waiver statute, by a plain reading of the law, repeals section 7 of P.L. 1982, c.77. That is the **involuntary** waiver statute. The voluntary waiver statute; section **8** of P.L. 1982 c. 77, was not changed, amended or even mentioned in the new law. That is an incredibly important distinction and one that cannot be ignored in the rules. A juvenile 14 years old may choose to waive pursuant to N.J.S.A. 2A:4A-27 and Rule 5:22-1 for *any* offense. Should these rules be adopted, this committee will be repealing that statute because no juvenile could *stay* in an adult court for non-waivable crimes, despite legislation which permits that. Hypothetically, if a 16 year old juvenile voluntarily, *at his request*, waived to the Law Division pursuant to N.J.S.A. 2A:4A-27 for a charge of Burglary, these rules would send that matter back to the Family Part for disposition contrary to the juvenile's clear intent. In fact, it would be contrary to the findings that a court must make to accept a voluntary waiver, i.e. that the juvenile *wants* the case heard in

the Law Division. The same would apply if a juvenile *wanted* to waive to Municipal Court for a disorderly offense. In that case, the Superior Court would need to have a colloquy with the juvenile to confirm their desire to waive. Then the matter would be transferred to the respective Municipal Court (which could be out of county). Then the Municipal Court would take a plea *only* to then be required to return to the Family Part for disposition. This type of hypothetical will become very complicated, taking into account the age differences allowable for waiver (14 for voluntary, 15 for Involuntary), the different venue rules between adult and juvenile jurisdiction, and the offenses for which juveniles may choose to waive compared to when a juvenile can be waived by the State's application. These examples above will repeatedly occur across the State if these rules are not amended to reflect the different treatment that must now be afforded juveniles who voluntarily waive pursuant to N.J.S.A. 2A:4A-27 and those waived without consent pursuant to N.J.S.A. 2A:4A-26.1.

In addition, the JPLN submits that such treatment will not be beneficial to those juveniles who voluntarily waive. Oftentimes, in practice, juveniles voluntarily waive to benefit themselves and their legal situation. Should these rules not treat the manner of waiver differently, these rules will eliminate an avenue which benefits juvenile defendants legally.

Thank you for taking the time to review these comments submitted. Members of the JPLN are available to discuss, in detail, the concerns raised with the committee at your next scheduled meeting. On behalf of the JPLN, I can be reached directly at 732.288-7807.

Respectfully Submitted,

Anthony V. Pierro
Juvenile Prosecutor's Leadership Network