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April 20, 2018

Honorable Glenn A. Grant, J.A.D.
Acting Admin. Director of the Courts
Rules Comments – Juvenile Waiver
Richard J. Hughes Justice Complex
PO Box 037
Trenton, NJ 08625-0037



Re: Proposed Amendment to Court Rule 5:22-2

Dear Judge Grant:

Please be advised that the undersigned is in receipt of your request for comment regarding the proposed Amendment to Court Rule 5:22-2, based on the enactment of the Criminal Justice Reform Law. Since receiving the request for comment, the undersigned has had an opportunity to thoroughly review the proposed rule amendment. Based upon that thorough review, the undersigned would have no objection to and be in support of the amendment as proposed and recommended by the Committee. The only adjustment that the undersigned would make is the following“the juvenile may be released to law enforcement for the sole purposes of processing, i.e. Live Scanning, consistent with the mandate of the Criminal Justice Reform law enacted January 1, 2017.”

Other than that slight modification outlined above, the undersigned would put forth one further suggestion on behalf of the New Jersey Juvenile Prosecutor Leadership Network. The New Jersey Juvenile Prosecutor Leadership Network (hereinafter NJJPLN) agrees that waived juvenile defendants are “eligible defendants” for purposes of the Criminal Justice Reform Law. However, NJJPLN suggests an amendment to the current practice of having a Probable Cause determination *after* the adult criminal complaint is filed with the Court. As you are aware, juvenile defendants are entitled to a Probable Cause determination *prior* to the juvenile court waiving jurisdiction under R. 5:22-2.

The law is well-settled 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

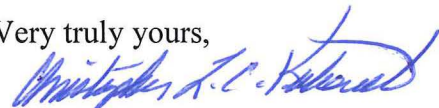
'does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands, and credibility determinations [will] seldom [be] crucial in deciding whether the evidence supports a reasonable belief in guilt.'" *Id.* citing Gerstein v. Pugh, 420 U.S. 103, 122 (1975). The Supreme Court also 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 for establishing probable cause. There is no language that defines probable cause differently for purposes of an adult complaint. Therefore, a determination of probable cause by a Superior Court Judge sitting in the family court should suffice for purposes of the Criminal Justice Reform Law. In fact, because of their significance in the juvenile context, waiver hearings are typically much more extensive than the Criminal Justice Reform Law requires regarding a probable cause determination.

The current practice of conducting two separate probable cause hearings on the identical facts and allegations within one week is inefficient to both the State and the Courts. We are suggesting that the Order finding probable cause by the juvenile court, signed by the juvenile judge, suffice for purposes of the Criminal Justice Reform Law.

If Your Honor has any questions regarding this matter, please do not hesitate to have a member of your staff contact the undersigned so that they can be answered in an expeditious fashion. Thanking the Court for its kind consideration of the State's position in this and all matters, I am....

Very truly yours,



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cc: Andrew C. Carey, Prosecutor