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PHILIP D. MURPHY
Governor

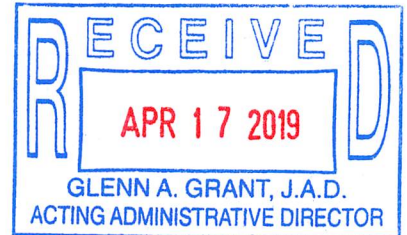
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April 8, 2019



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Dear Judge Grant:

Please accept this letter as official comment on the proposed amendment of Rule 5:20-1(c) included in the Supreme Court’s Family Practice Committee (“Family Practice Committee”) Report.

The Family Practice Committee has proposed adding the following underlined language to Rule 5:20-1(c):

Every complaint alleging juvenile delinquency shall be reviewed by court intake services in the manner provided by law for recommendation as to whether the complaint should be dismissed, diverted or referred for further court action. Where the complaint alleges conduct which, if committed by an adult, would constitute a crime as defined by N.J.S. 2C:1-4a or a repetitive disorderly persons offense as defined by N.J.S. 2A:4A-22(h), or any disorderly persons offense as defined in c. 35 or c. 36 of Title 2C, the matter shall not be diverted by the court unless the prosecutor consents thereto. Nothing in this rule precludes the court from diverting any complaint after a hearing wherein all parties have an opportunity to be heard.

For two reasons, I oppose the addition of the proposed language that gives a court absolute discretion to divert any juvenile complaint.

First, in crafting its amendment to Rule 5:20-1(c), the Family Practice Committee states that it relied on “the juvenile justice system’s primary goal of rehabilitation of juvenile offenders.” The Committee, in their report, failed to consider the equally important goal of



protecting public safety. The Court has repeatedly found that “[a]lthough rehabilitation, historically, has been the primary focus of the juvenile justice system, a second purpose — increasingly so in recent times — is the protection of the public.” State In Re C.K., 233 N.J. 44, 67 (2018) (emphasis added). “[M]odern experiences with serious juvenile crimes have elevated the importance of punitive sanctions in juvenile dispositions.” State In Re K.O., 217 N.J. 83, 92 (2014). The Legislature specifically sought to include “a range of sanctions” in the scheme it created, which are “designed to promote accountability and protect the public.” N.J.S.A. 2A:4A-21(c).

The proposed amendment to the Rule does little to promote the important goal of protecting the public safety. It would give judges unfettered discretion to divert a juvenile who is alleged to have committed a first- or second-degree crime such as murder or aggravated sexual assault. It does not have any qualifier, or limit such discretion to less serious offenses, such as disorderly persons offenses. Such an outcome in serious cases would undermine an important goal of the juvenile justice system – to promote public safety.

Second, the language of the proposed amendment severely undercuts — indeed, practically eliminates — the discretion that prosecutors have in juvenile cases. N.J.S.A. 2A:4A-71 (emphasis added) states, in pertinent part, that:

[w]here [a juvenile] complaint alleges a crime which, if committed by an adult, would be a crime of the first, second, third or fourth degree, or alleges a repetitive disorderly persons offense or any disorderly persons offense defined in chapter 35 or chapter 36 of Title 2C, the complaint shall be referred for court action, unless the prosecutor otherwise consents to diversion.

By adding proposed language to Rule 5:20-1(c) that gives the court the discretion to divert any complaint, the proposed amendment directly contravenes the diversionary scheme enacted by the Legislature. Both the Appellate Division’s and the Family Practice Committee erroneously classified Rule 5:20-1(c) as a procedural rule, which would be immune from overriding legislation under Winberry v. Salisbury, 5 N.J. 240, 255 (1950). Indeed, in State In Re N.P., 453 N.J. Super. 480, 496-97 (App. Div. 2018), the panel stated that “[h]ere we deal with a procedural matter, *i.e.*, whether a juvenile complaint charging a crime or repetitive disorderly persons offense may be diverted without the prosecutor’s consent.”

Such analysis misses the mark. The question of who has the authority to divert a juvenile case is substantive because it directly implicates the rights of the plaintiff — the State — in these juvenile cases. It is not merely “one step in a series of steps in a ladder to final determination,” see Suchit v. Baxt, 176 N.J. Super. 407, 428 (Law Div. 1980). Rule 5:20-1(c) directly determines what course a juvenile case will take and what the outcome of that case will be. It is not one step in a procedure that may or may not impact the resolution of the juvenile case.

This question has already been addressed by the New Jersey Supreme Court in the context of pre-trial intervention (“PTI”). In State v. Leonardis, 73 N.J. 360, 381 (1977), the Court held that while judges may review prosecutors’ decisions to deny admissions to PTI, “such

review should be limited,” and that “the decision [to deny PTI] should lie, in the first instance, with the . . . prosecutor.” Ibid. The Court stated: “[w]e are mindful of the prosecutor's duty to enforce the law and of the Legislature's authority to proscribe certain conduct and fix penalties for violations. Accordingly, great deference should be given to the prosecutor's determination not to consent to diversion.” Ibid. In other words, absent a showing of “patent and gross abuse of discretion by the prosecutor” in denying PTI, a court may not divert a defendant to a PTI program without the consent of the prosecutor. Ibid.

Like the PTI program, the courts should not interfere with prosecutorial discretion in diverting juvenile complaints. The proposed language giving judges the power to divert any case, even over the objection of the prosecutor, removes prosecutorial discretion regarding diversion of juvenile complaints from all juvenile cases.

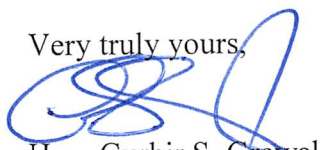
If a judge is allowed to divert any complaint, including a homicide or aggravated sexual assault, after a hearing, as they would be under the Family Practice's Committee second proposed amendment to Rule 5:20-1(c), then the entirety of the Rule is null because the courts would no longer have to seek prosecutors' consent to divert any case.

For the foregoing reasons, I oppose the Family Practice Committee's proposed amendment to the Rule.

I do not oppose the addition of disorderly persons offenses in chapters 35 or 36 of Title 2C. In such cases, prosecutors should consent before the juvenile is diverted from the regular criminal process. This amendment to the rule ensures that such cases are not diverted automatically, and that the ultimate decision to divert rests with the prosecutor.

Thank you for your consideration of these comments.

Very truly yours,



Hon. Gurbir S. Grewal
Attorney General