

# COUNTY PROSECUTORS ASSOCIATION OF NEW JERSEY

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April 17, 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 the 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, by the County Prosecutors' Association of New Jersey ("CPANJ").

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.

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The CPANJ concurs with the opposition set forth by Attorney General Grewal in his submission to your Honor; however, the CPANJ further submits that the proposed rule amendment is an unconstitutional violation of the separation of powers doctrine.

The New Jersey Constitution created three separate branches of government and specifically wrote that "[n]o person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others. . ." N.J. CONST. art. 3, § 1, ¶ 1. In regard to the prosecution of offenders, New Jersey law is clear, "the criminal business of the State shall be prosecuted by the Attorney General and the county prosecutors" N.J.S.A. 2A:158-4, both of whom are aligned with the Executive branch of government. N.J. CONST. art.5 §4, ¶3. The proposed rule amendment wrongfully usurps the statutory authority of County Prosecutors to use their discretion in determining if a juvenile who is charged with a first, second, third, or fourth degree crime should be diverted and gives the court absolute discretion to divert any juvenile complaint. This proposal is just what the Constitution specifically said one branch of government cannot do to another branch, and is in direct conflict with the statutory authority granted to County Prosecutors by the legislature and therefore should not be adopted.

For the foregoing reasons, and those set forth in Attorney General Grewal's opposition to the Rule change, the CPANJ opposes the Family Practice Committee's proposed amendment to Rule 5:20-1(c).

Thank you for your consideration of these comments.

Respectfully submitted,



Francis A. Koch

Sussex County Prosecutor and  
County Prosecutors' Association  
of New Jersey, President

cc: Attorney General Gurbir S. Grewal  
21 County Prosecutors  
Middlesex County First Assistant Prosecutor Christopher L.C. Kuberiet