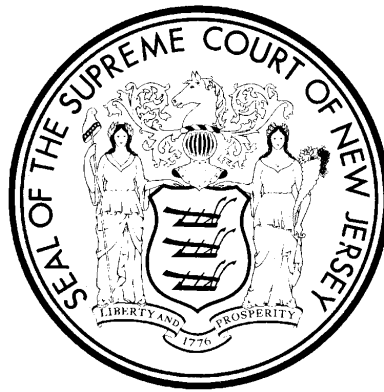


**SUPREME COURT  
FAMILY PRACTICE COMMITTEE  
JUVENILE WAIVER REPORT**



**2017-2019  
RULES CYCLE**

December 29, 2017

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## **I. Introduction**

Effective January 1, 2017, the Criminal Justice Reform Law (P.L. 2014, c.31) substantially reformed New Jersey's system of pretrial release. On December 6, 2016, the Supreme Court entered a Rule Relaxation Order following recommendations of the Advisory Committee on Criminal Justice Reform. The Order supplemented and relaxed the Rules of Court as follows:

(1) Rule 1:2-1 was supplemented so as to include the combined first appearance/central judicial processing court event.

(2) Rule 5:22-2(a) was supplemented so as to include a requirement the prosecutor file a proposed complaint-warrant or complaint-summons with the motion papers to waive a juvenile to adult court.

(3) Rules 3:25-4(a) and 7:8-11 were supplemented so as to include juvenile defendants within the categories of "defendant" and "eligible defendant" when the juvenile defendant's complaint is transferred to adult status and the juvenile defendant is remanded to a juvenile detention facility, jail or other detention facility.

(4) The Part III and Part VII Rules were relaxed and supplemented such that no statement or other disclosure, written or otherwise, made or disclosed by the defendant to the Pretrial Services Program may be used at any stage of the matter for any purpose, except: (a) for purposes specifically provided for under the Rules of Court, or (b) in the prosecution of fraudulently obtaining pretrial release or the services of the Public Defender.

The Supreme Court Family Practice Committee ("Committee") was charged with developing a proposed amendment to Rule 5:22-2(a) consistent with the December 6, 2016 Rule Relaxation Order.

Where rule changes are proposed, deleted text is bracketed [**as such**], and added text is underlined **as such**. No change to a paragraph of the rule is indicated by ". . . **no change.**"

## II. Proposed Rule Amendment

### A. Proposed Amendment to R. 5:22-2 – Waiver of Jurisdiction and Referral Without Juvenile’s Consent

To ensure efficient case processing, the Committee recommends the complaint be filed after waiver is granted rather than attaching a proposed hard copy of the complaint with the motion. Upon granting of waiver and the family court’s decision on detention pursuant to N.J.S.A. 2A:4A-36, the waived juvenile would be released to law enforcement, which is consistent with current practice. If detention is necessary, the family court would decide whether the juvenile is detained in a juvenile detention facility or an adult facility. Pursuant to the statute, the presumption is that the waived juvenile shall be detained in a juvenile detention facility. When the waived juvenile is released to law enforcement, the matter is processed as a criminal case.

The Committee recommends within 12 hours of the granting of waiver, the prosecutor shall file a complaint-warrant through the criminal court’s electronic filing system, also known as eCDR. The 12-hour timeframe in the proposed rule is based on R. 3:4-1, which requires a complaint-warrant be presented to a judge or, in the absence of a judge, a judicial officer no later than 12 hours after arrest of an adult defendant so that a determination can be made whether a warrant or summons will issue.

The Committee recommends the following rule amendment:

#### R. 5:22-2. Waiver of Jurisdiction and Referral Without Juvenile's Consent

(a) Motion for Waiver of Jurisdiction and Referral. . . . no change.

(b) Waiver Hearing. . . . no change.

(c) Factors to be Considered. . . . no change.

(d) Standards for Referral. . . . no change.

(e) Order to Waive Jurisdiction and for Referral. . . . no change.

(f) Filing Complaint Upon Granting of Waiver. Upon the issuance of an order granting waiver and a detention decision pursuant to N.J.S.A. 2A:4A-36, the waived juvenile shall be released to law enforcement and the prosecutor shall file a complaint with the appropriate court within 12 hours.

Note: Source -- R.R. (1969) 5:9-5(b), (c). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b)(2)(E) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b)(2)(F) and (b)(4) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b)(2)(D), (E) and (F) amended, paragraph (b)(2)(G) adopted June 28, 1996 to be effective September 1, 1996; paragraphs (b) and (b)(1) amended, former paragraphs (b)(2), (b)(3), and (b)(4) deleted, new paragraphs (b)(2), (b)(3), and (b)(4) added July 10, 2002 to be effective September 3, 2002; paragraphs (b)(2)(B) and (b)(2)(C) amended, new paragraph (b)(2)(D) adopted, paragraph (b)(3) caption amended, paragraphs (b)(3)(B) and (b)(3)(C) amended, new paragraph (b)(3)(D) adopted July 28, 2004 to be effective September 1, 2004; new paragraph (b) added, and former paragraphs (b), (c), (d) redesignated as paragraphs (c), (d), (e) June 15, 2007 to be effective September 1, 2007; caption amended, paragraphs (a) and (b) caption and text amended, new paragraph (c) adopted, former paragraph (c) redesignated as paragraph (d) and text amended, former paragraph (d) redesignated as paragraph (e) and caption and text amended, former paragraph (e) deleted with text relocated to paragraph (b) August 1, 2016 to be effective September 1, 2016; new paragraph (f) adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

### III. Committee Members and Staff

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Hon. Bonnie J. Mizdol, Chair

Dated: December 29, 2017