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### **ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2020-12**

**TO:** All Law Enforcement Chief Executives

**FROM:** Gurbir S. Grewal, Attorney General

**DATE:** December 3, 2020

**SUBJECT: Directive Establishing Policies, Practices, and Procedures to Promote Juvenile Justice Reform**

A key function of the juvenile justice system in New Jersey is to rehabilitate youth and help them enter adulthood less likely to break the law. For the vast majority of youthful offenders, the system works best when juveniles are diverted away from formal court proceedings and towards social or familial support. Over the past two decades, New Jersey has emerged as a national leader in safely reducing the number of juveniles detained by the juvenile justice system. We were the first state in the country to fully adopt a groundbreaking program known as the Juvenile Detention Alternatives Initiative (JDAI), which transformed the state's juvenile justice system and largely eliminated the chronic, dangerous overcrowding that plagued our state's juvenile detention facilities.

Since 2003, the year before New Jersey implemented JDAI, the total number of juveniles in detention per year has dropped by 80 percent, from about 12,000 to less than 2,500, with youth of color accounting for almost 90 percent of the decline. Further, juveniles who are placed in detention alternative programs in lieu of detention receive supervision and support in their communities while awaiting the outcome of their case in court. These reforms have not only reduced the number of juveniles sent to secure detention, but resulted in deep and dramatic systemic changes. The decline in numbers has allowed multiple detention centers to merge their operations and share services. At the start of JDAI, there were 17 county-operated detention centers in New Jersey - today there are seven. The number of juveniles held in detention has also led to a reduction in the number of juveniles committed to state custody. As with detention reductions, the reduction in the population of youth committed to secure confinement has most dramatically impacted communities of color.

This Directive is intended to build upon these successes and push forward the next phase of New Jersey’s Juvenile Justice Reform efforts. This Directive outlines five mechanisms available to police officers and prosecutors to divert youth from the juvenile justice system and limit the likelihood of unnecessary detention:

- **Curbside warnings.** A curbside warning is an informal “talking to”—one that typically arises when an officer observes a juvenile engage in some minor act of delinquency. The conversation occurs in the community, not at the police department, and can be as simple as an officer telling a teenager to “knock it off” without any further formal proceedings. Curbside warnings demonstrate to juveniles that officers are present to give guidance, direction, and assistance, and not simply to take them into custody. *See* Section I.
- **Stationhouse adjustments.** A stationhouse adjustment is more formal than a curbside warning, but is nonetheless designed to divert a juvenile from the juvenile justice system without the filing of charges. In such situations, an officer typically asks the juvenile and a parent or guardian/caregiver/designee to come to the police station to discuss an alleged offense and work together to develop an appropriate resolution, which is then memorialized in a written agreement. The officer may refer the juvenile for social services and, if property has been stolen or damaged, require the juvenile to make restitution in some form. The goal is to engage the parent or guardian/caregiver/designee—and, where appropriate, the victim—in any resolution, allowing the family and community resources to address the violation rather than the courts. *See* Section II.
- **Use of complaint-summonses in lieu of complaint-warrants.** In more serious cases, an officer may conclude that an informal resolution is unlikely to be effective and that formal charges are necessary. Under court rules, officers and prosecutors may file charges using one of two charging documents: a “complaint-warrant,” which allows the officer to take custody of the charged individual and detain them, or a “complaint-summons,” which allows the individual to remain in the community until their initial court appearance. By treating the complaint-summons as the “default” charging document for juveniles—with the complaint-warrant reserved only for the most serious charges or to protect the public—officers and prosecutors can ensure that youthful offenders are not subject to unnecessary detention in a juvenile facility immediately following the filing of charges. *See* Section V.
- **Presumption against pretrial juvenile detention.** A juvenile cannot be detained pretrial without the permission of a judge or Court Intake Services. N.J.S.A. 2A:4A-34(b). State law carefully circumscribes the use of pretrial juvenile detention, limiting it to cases where a juvenile has failed to appear at court proceedings or where, for certain categories of offenses, the juvenile’s release would seriously threaten the physical safety of persons or property in the community. *See* N.J.S.A. 2A:4A-34(c). This presumption against detention ensures that the majority of juveniles accused of delinquency remain in the community during their court proceedings, allowing them to draw on their communities for support and rehabilitative services. However, nothing in this Directive prevents law enforcement

or prosecutors from seeking pretrial juvenile detention when the criteria set forth in N.J.S.A. 2A:4A-34(c) exists. *See* Section VI.

- **Post-charge diversion by prosecutors.** The mere fact that a law enforcement officer has filed charges against a juvenile does not preclude the possibility of diverting the youth into other programs more conducive to rehabilitation. As a juvenile matter proceeds, prosecutors can—and should—continually evaluate the case to determine whether diversion would better accomplish the goals of the juvenile justice system over formal court proceedings. A prosecutor may consider, among other things, dismissing the complaint in favor of a stationhouse adjustment or referring the case to diversionary programs operated by the judiciary, including the Intake Service Conference, the Juvenile Conference Committee, or the Family Crisis Intervention Unit. *See* Section VIII.

When considering when and how to use each of these five mechanisms, officers and prosecutors should start with the presumption that juveniles should be diverted out of the juvenile justice system whenever possible, so long as the diversion will promote accountability, advance the juvenile’s rehabilitation, and not present safety risks to the community. To the extent that diversion is not possible, officers and prosecutors should next consider charging by way of complaint-summons, rather than complaint-warrant, whenever that can be accomplished without jeopardizing public safety or welfare. This framework reserves the complaint-warrant for the most serious charges or to protect the public, and accompanying requests for detention should result in the least restrictive means necessary to promote accountability and rehabilitation, and address safety risks.

This Directive calls upon officers and prosecutors to use their best judgment in deciding when diversion is appropriate, and provides the tools to facilitate uniform decision-making. But as with any exercise of discretion, officers and prosecutors must take special care to ensure that their decisions are based on the individualized facts of a specific case and not on any improper factors like actual or perceived race, sex, gender identity, sexual orientation, or familial or socioeconomic status.<sup>1</sup> Research shows that all of us—including those in law enforcement—carry implicit biases, the unconscious and often subtle associations we make between groups of people and various traits. We can and must work to counteract these effects, both by training ourselves to recognize when they creep into our reasoning and by continually questioning our own assumptions about the people with whom we interact.<sup>2</sup> In doing so, we can better address racial and other disparities in our juvenile justice system.

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<sup>1</sup> There must be compliance with current, and future, Directives, Guidelines, and laws, established to prohibit discrimination and harassment based on actual or perceived race, religion, national origin, gender, sexual orientation, gender identity or expression, disability, and other protected characteristics, and to guarantee safety and dignity in all encounters with law enforcement and the juvenile justice system. (*e.g.* Directive 2019-3 – Law Enforcement Interactions with Transgender Individuals).

<sup>2</sup> Implicit bias training for all New Jersey State Police law enforcement officers, all prosecutors and detectives employed by the Division of Criminal Justice, and all prosecutors and detectives employed by the 21 County Prosecutor’s Offices, was mandated in June 2018 and completed in 2019.

Finally, on January 4, 2021, the Administrative Office of the Courts will expand its statewide electronic complaint system—known as the Electronic Court Disposition Reporting, or eCDR system—to include juvenile cases. The launch of “juvenile eCDR” will allow us to transition away from paper files and towards a system that is seamlessly integrated with court records. Accordingly, the final part of this Directive outlines the new procedures to be used when generating juvenile eCDR complaints and the decision-making framework to be used in what will now be summons versus warrant, and detention decisions. This framework models the Criminal Justice Reform process<sup>3</sup> in an effort to promote uniformity in charging decisions across the State. This new system will not simply make us more efficient in our work, but will also allow us to more easily compile and analyze data about how juveniles are treated when engaged in the juvenile justice system.

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the procedures outlined below. This Directive repeals and supersedes the provisions of Attorney General Law Enforcement Directive No. 2008-2 (Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses); the 1998 Attorney General Guidelines on Procedures for Collecting Juvenile Fingerprints and Photographs; and Attorney General Executive Directive No. 1990-1 (Handling of Juvenile Matters by Police and Prosecutors).

## **I. Curbside Warnings**

- A. ***Definition.*** A “curbside warning” is a brief, informal interaction between a law enforcement officer and a juvenile who the officer observed engage in an act of minor delinquency.<sup>4</sup> During the interaction, the officer counsels the juvenile to discontinue the conduct, warns the juvenile about the potential consequences of future delinquency, and then concludes the interaction without taking any further action. For the purposes of this Directive, curbside warnings do not include interactions between juveniles and School Resource Officers or other law enforcement officers assigned to a school, as those interactions are governed by policies and practices established between schools and law enforcement agencies.

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<sup>3</sup> See Attorney General Law Enforcement Directive No.2016-6 v3.0, Section 4.

<sup>4</sup> N.J.S.A. 2A:4A-23 defines “delinquency” as the commission of an act by a juvenile which if committed by an adult would constitute a (a) crime; (b) disorderly persons offense or petty disorderly persons offense; or (c) violation of any other penal statute, ordinance or regulation.

B. ***Presumption in favor of curbside warnings for certain minor, non-violent conduct.***

1. There shall be a presumption in favor of engaging in a curbside warning—rather than initiating more formal action involving a juvenile—when the officer personally encounters a juvenile who has allegedly engaged in conduct that appears to constitute:
  - a. An ordinance violation, such as loitering or curfew violations; *or*
  - b. Activity that is dangerous or disruptive, but not necessarily unlawful.
2. An officer may overcome this presumption and initiate action more formal than a curbside warning when:
  - a. The officer has reason to believe that the juvenile is presently engaged in other, more serious unlawful conduct; *or*
  - b. The juvenile continues to engage in the same unlawful conduct following the issuance of a prior curbside warning; *or*
  - c. The juvenile has a pending formal complaint, demonstrating a continuing course of improper conduct, related or unrelated to the pending charge.

C. ***Other curbside warnings.*** For unlawful conduct more serious than described in Section I.B above, such as petty disorderly persons offenses, disorderly persons offenses, and fourth-degree crimes, there is no presumption in favor of a curbside warning, but an officer may nonetheless engage in a curbside warning at the officer’s discretion, provided that the conduct did not cause serious or significant bodily injury to another.

D. ***Reporting and data collection.*** Each law enforcement agency is responsible for developing its own system for collecting information about the use of curbside warnings by its officers, in order to report cumulative data to the Division of Criminal Justice and to their County Prosecutor. This data will be submitted using the form found in Appendix B and all data collected will be made publicly available by the Division of Criminal Justice. Agencies should take care to ensure that its reporting requirements are not so onerous that they transform informal curbside warnings into more formal law enforcement interactions, while also ensuring that agencies have the ability to assess the use of curbside warnings across different demographic groups.

II. **Stationhouse Adjustments**

A. ***Definition.*** A “stationhouse adjustment” is a mechanism that allows law enforcement agencies to resolve a juvenile’s unlawful conduct without formal court proceedings. A stationhouse adjustment, which must be memorialized in a signed agreement, establishes one or more conditions that the juvenile must meet in exchange for the law enforcement agency declining to pursue a formal delinquency complaint against the juvenile.

- B. ***Presumption in favor of stationhouse adjustments for certain unlawful conduct.*** There shall be a presumption in favor of performing a stationhouse adjustment—rather than pursuing a delinquency complaint against a juvenile—when:
1. The juvenile has no prior history of juvenile adjudications or stationhouse adjustments;
  2. The juvenile’s conduct constituted a petty disorderly persons offense, a disorderly persons offense, or a fourth-degree crime if committed by an adult; *and*
  3. The juvenile’s unlawful conduct did not constitute an act of bias, sexual misconduct, or violence, and did not involve controlled dangerous substances (CDS) or CDS paraphernalia.
- C. ***Overcoming the presumption in favor of a stationhouse adjustment.*** A law enforcement officer may overcome the presumption of a stationhouse adjustment and pursue a formal delinquency complaint only with the approval of the County Prosecutor, or designee<sup>5</sup>, who shall consider:
1. The juvenile’s age and maturity;
  2. The nature and circumstances of the offense;
  3. The juvenile’s prior history of juvenile adjudications and/or stationhouse adjustments, with a presumption against authorizing a stationhouse adjustment for any juvenile previously adjudicated for a first- or second-degree offense;
  4. The willingness of the juvenile to adhere to the proposed terms of the stationhouse adjustment; *and*
  5. Where relevant, the support and cooperation of the victim and the juvenile’s parent, or guardian/caregiver/designee.
- D. ***Discretion to authorize stationhouse adjustments for other conduct.***
1. For conduct not described in Section II.B (e.g., for conduct not subject to a presumptive stationhouse adjustment), there shall be no presumption in favor of a stationhouse adjustment, but a law enforcement agency shall nonetheless consider whether to perform one in its discretion (“discretionary stationhouse adjustment”). An agency may perform a discretionary stationhouse adjustment, provided that the County Prosecutor, or designee, authorizes the stationhouse adjustment.

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<sup>5</sup> The term “designee” may include an employee of the County Prosecutor’s Office who has been specifically designated in writing by the County Prosecutor to perform on-call legal advice, review, and/or approval functions pursuant to this Directive. This designee should be available on a 24/7 basis to provide real-time legal advice and charging approvals to law enforcement officers, and County Prosecutor’s may decide to use their already-established system of on-call Assistant Prosecutors to satisfy this function. *See* Section IV.A.

2. In deciding whether to authorize a discretionary stationhouse adjustment, the County Prosecutor, or designee, shall consider the factors outlined in Section II.C.

Prosecutors should not automatically refuse to consent to diversion of a case, based solely upon the fact that the juvenile previously had been adjudicated or diverted from formal adjudication. The manner in which prior allegations of delinquency were handled is relevant only in determining whether diversion of current charges will be effective in achieving the objectives of the juvenile justice system, including the interests of public safety. This Directive specifically permits consideration of a stationhouse adjustment and other forms of diversion for juveniles with prior formal charges and/or prior diversion.

- E. ***Drug and alcohol use.*** Generally speaking, charges related to drug or alcohol use should be considered for stationhouse adjustment, provided that a treatment plan, if clinically appropriate, is included as part of the stationhouse agreement. When evaluating such cases, the County Prosecutor, or designee, should review all relevant information regarding the juvenile's history of substance use or dependency, and check that any proposed treatment plan, where needed, is included in the stationhouse agreement and memorializes proper referrals and recommendations to address the juvenile's medical and mental health needs.<sup>6</sup>
- F. ***Victim engagement.*** As part of any stationhouse adjustment process, the law enforcement officer shall notify any victims of the juvenile's unlawful conduct and seek to engage those victims in the resolution. Where appropriate, law enforcement agencies may—and are encouraged to—employ restorative justice models, as they develop, that facilitate reconciliation between the victim and the juvenile.
- G. ***Conditions.*** A stationhouse adjustment shall include one or more conditions that the juvenile must satisfy, which may include, but are not limited to:
  1. Mediation;
  2. Restitution;
  3. Community service;
  4. Letters of apology or other writing projects;
  5. Consequences imposed by the juvenile's parent or guardian/caregiver/designee, such as a suspension of driving privileges;

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<sup>6</sup> If intervention is clinically appropriate, juveniles should be referred for diagnostic assessment and appropriate treatment. Local planning bodies, including Family Crisis Intervention Units, the Youth Services Commission, and the County Interagency Coordinating Council, can assist with identifying available assessment and treatment resources. Assistance can also be provided through PerformCare, New Jersey's Contracted System Administrator for the Department of Children and Families, Children's System of Care. PerformCare provides substance use treatment for youth and families throughout New Jersey. (PerformCare hotline: 1-877-652-7624).

6. Enrollment in community programs, such as those offered by County Youth Service Commissions or the Police Chaplain Program<sup>7;8</sup>
7. Participation in restorative justice programs, if appropriate; *and/or*
8. Where recommended, participation in mental health or substance abuse programs.

H. ***Stationhouse adjustment agreements.***

1. All stationhouse adjustments shall be memorialized in a written agreement, which shall remain in effect for three to six months from the date the agreement is signed. An example of such an agreement appears in Appendix A.
2. Before signing a stationhouse adjustment agreement, the law enforcement officer shall advise the juvenile that:
  - a. Violations of the stationhouse adjustment agreement may result in the filing of a juvenile delinquency complaint for the conduct that gave rise to the stationhouse adjustment; *and*
  - b. Future delinquent activity could result in more serious action taken by the juvenile justice system (*e.g.*, probation, loss of driver's license, detention) and collateral consequences (*e.g.*, DNA collection, restrictions on college financial aid, limitations on career opportunities).
3. The following parties shall sign the stationhouse adjustment agreement:
  - a. The juvenile;
  - b. The juvenile's parent or guardian/caregiver/designee;<sup>9</sup>
  - c. The law enforcement officer; *and*
  - d. Victims may, but are not required to, sign the stationhouse adjustment agreement.

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<sup>7</sup> Chaplain and faith-based programs may be used only with the consent of the juvenile, as consideration must be given to the faith, or no faith, to which the juvenile subscribes, and resources should be in place to provide equivalent, alternative programming, so a juvenile has equal access to effective stationhouse adjustment services.

<sup>8</sup> Law enforcement agencies are encouraged to partner with non-profit and government-run community organizations to assist with the supervision of stationhouse adjustment agreements.

<sup>9</sup> If a parent or guardian/caregiver/designee objects to the juvenile entering into a stationhouse adjustment with law enforcement, a stationhouse adjustment cannot be completed. However, all reasonable efforts should be made to explain the purpose of a stationhouse adjustment, which is to avoid the filing of a formal complaint.



In cases where one or more victims object to the agreement,<sup>10</sup> the law enforcement officer must notify the County Prosecutor, or designee, who must decide whether to authorize the agreement notwithstanding the victim's objection. Further, for all discretionary stationhouse adjustments, or cases where the victim objects, the approval of the County Prosecutor, or designee, shall be noted on the agreement.

- I. ***Quarterly reporting and data collection.*** On a quarterly basis, each state, county, and local law enforcement agency shall report to the Director of the Division of Criminal Justice and County Prosecutor in their jurisdiction the following anonymized information about each stationhouse adjustment in effect with that agency in the prior quarter (*See Appendix B*):
1. The juvenile's age at the time of the unlawful conduct;
  2. The juvenile's self-reported race, ethnicity, and gender;
  3. The unlawful conduct; *and*
  4. Whether the stationhouse adjustment was satisfactorily completed or is still pending and, if not completed, the reason for the non-completion.

This data will be made publicly available by the Division of Criminal Justice.

### III. **Juvenile Processing, Fingerprinting, DNA Collection, and Complaint Entry**

As emphasized above, for the vast majority of youthful offenders, the system works best when juveniles are diverted away from formal court proceedings and towards rehabilitative services, along with social or familial support. There will be cases, though, where diversion is not possible and juveniles will be charged. Section III, and the sections which follow, provide the framework for law enforcement officers and prosecutors when charging and issuing complaints utilizing the Administrative Office of the Court's eCDR system.

- A. ***Juvenile Central Registry.*** Law enforcement considering charging a juvenile should first ascertain the juvenile's history by accessing the Juvenile Central Registry. The results of this initial check may result in reconsideration of diversion, rather than formal charges. The Juvenile Central Registry tab in eCDR is also where complaint entry is initiated.
- B. ***Fingerprinting.*** Fingerprinting is required when a juvenile, age fourteen or older,<sup>11</sup> is charged on the basis of an act which, if committed by an adult, would constitute a crime. N.J.S.A. 2A:4A-61(a)(3). In these circumstances, the charging agency<sup>12</sup> shall take and

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<sup>10</sup> When probable cause exists and the victim objects to the stationhouse adjustment, the victim may request a formal complaint. This becomes a private citizen's complaint; however, it is subject to review by a County Prosecutor, or designee, whose decision to proceed with a stationhouse adjustment, or to refer for formal charges, is controlling.

<sup>11</sup> "Age fourteen or older" means that the juvenile was fourteen or older at the time the charged offense was committed, not the date the complaint was signed.

<sup>12</sup> "Charging agency" shall include a law enforcement agency which files a delinquency complaint signed by a private citizen.

submit the fingerprints of the juvenile by using a Live Scan system, which includes designation of offenses charged. The Live Scan fingerprinting must be completed before beginning an eCDR complaint. Once the Live Scan record has been submitted and confirmation is received from the Computerized Criminal History (CCH) system and/or the data is displayed in eCDR, the law enforcement officer or agency shall begin generating a complaint in eCDR. If a law enforcement agency is not equipped with a Live Scan system, the agency shall develop and implement a plan to ensure compliance with the requirements of this Directive, similar to what is required for compliance with Criminal Justice Reform.

All reasonable steps shall be taken by the charging agency to ensure fingerprinting occurs for those fourteen and older who are charged with an act which, if committed by an adult, would constitute a crime. In those rare cases when the charging agency does not fingerprint the juvenile, either the charging agency at a later date, or an appropriate law enforcement agency designated by the County Prosecutor, shall fingerprint the juvenile as soon as possible or at the time of adjudication. The CCH and Family Automated Case Tracking System (FACTS) should be checked by the Prosecutor's Office prior to adjudication and if there is no record that the juvenile was fingerprinted, the juvenile should be fingerprinted at adjudication in accordance with a policy to be established by the Prosecutor's Office.

Juveniles charged with delinquency who are under the age of fourteen at the time of the offense shall not be fingerprinted by the charging agency. *See* N.J.S.A. 2A:4A-61(a)(3). In addition, juveniles who are charged with disorderly persons offenses or petty disorderly persons offenses shall not be fingerprinted. *See* N.J.S.A. 2A:4A-61(a)(3). However, under N.J.S.A. 2A:4A-61(a)(1), fingerprints may be taken for juveniles of any age for comparison to latent fingerprints, either with the approval of the court, or with the consent of the juvenile and parent or guardian. N.J.S.A. 2A:4A-61(a)(1) also provides that such prints "... shall be destroyed when the purpose for the taking of fingerprints has been fulfilled." If a juvenile who has been fingerprinted under section (a)(1) for comparison with latent fingerprints is fourteen or older and is later charged with delinquency for a crime, the juvenile's fingerprints shall be taken and submitted to the State Bureau of Identification within the Division of State Police.

Fingerprinting is also required when a juvenile is waived to the Superior Court, Law Division, Criminal Part, as a juvenile who is waived to adult court pursuant to N.J.S.A. 2A:4A-26.1 (involuntary waiver) or N.J.S.A. 2A:4A-27 (waiver at election of juvenile), shall be treated as an adult. Further, when a juvenile is waived to adult court, the prosecutor must ensure that a complaint-summons or complaint-warrant is filed. *R.* 5:22-2(f).

Fingerprinting is also required when a juvenile, age thirteen or under, is adjudicated delinquent in Family Court on the basis of an act which, if committed by an adult, would constitute a crime. *See* N.J.S.A. 2A:4A-61(c); N.J.S.A. 53:1-15. It is the responsibility of County Prosecutors, in conjunction with County Sheriffs' Departments, local law enforcement, and the Family Court, to develop procedures requiring fingerprinting immediately upon adjudication.

In cases where the court enters a formal adjournment of disposition, or deferred disposition pursuant to N.J.S.A. 2A:4A-43(b)(1), for a juvenile who has committed an offense that

would be a crime if committed by an adult, fingerprinting should not occur. If the adjournment or deferment period is successfully completed, the case will be dismissed and no fingerprints should be taken. If the juvenile reoffends and an adjudication is entered, fingerprints shall be taken when the juvenile returns to court for the entry of a formal adjudication.

In cases where juveniles are adjudicated for an offense that would constitute a crime if committed by an adult and the Prosecutor's Office is not involved (*i.e.*, case is heard by the Juvenile Referee), the Family Court will implement a procedure, in conjunction with the County Prosecutor's Office, whereby the court notifies the county or local law enforcement agency to ensure fingerprints are obtained upon adjudication.<sup>13</sup>

- C. **Photographs.** The charging agency shall photograph the juvenile for criminal identification purposes pursuant to N.J.S.A. 2A:4A-61(b). The New Jersey Code of Juvenile Justice forbids photographing juveniles under the age of fourteen "...for criminal identification purposes without the approval of the court, or the consent of the juvenile and [their] parent or guardian." N.J.S.A. 2A:4A-61(b). If a juvenile fourteen or older at the time of the commission of an offense that would be a crime, if committed by an adult, is photographed by the county law enforcement agency, an original photograph should be submitted to the State Bureau of Identification within the Division of State Police.
- D. **DNA collection.** Juveniles taken into custody for an act which, if committed by an adult, would constitute the following offenses, shall have a biological sample collected by the charging agency for purposes of DNA testing, pursuant to N.J.S.A. 53:1-20.20(b) & (e):
1. Aggravated sexual assault or sexual assault, N.J.S.A. 2C:14-2;
  2. Aggravated criminal sexual contact or criminal sexual contact, N.J.S.A. 2C:14-3;
  3. Murder, N.J.S.A. 2C:11-3;
  4. Manslaughter, N.J.S.A. 2C:11-4;
  5. Second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1) & (b)(6);
  6. Kidnapping, N.J.S.A. 2C:13-1;
  7. Luring or enticing a child, N.J.S.A. 2C:13-6;
  8. Endangering welfare of children, N.J.S.A. 2C:24-4, except for paragraph (2) of subsection a; *or*
  9. Any attempt to commit any of the above crimes.

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<sup>13</sup> Not all findings by the Juvenile Referee will require fingerprinting, such as deferred dispositions, unless a juvenile reoffends and a disposition requiring fingerprints is entered. For any adjudications for offenses where fingerprints are required, the juvenile will need to be fingerprinted via Live Scan.

A DNA sample shall be taken prior to the juvenile's release from custody, as statutorily required. In any case where DNA has already been submitted, as confirmed on the juvenile's CCH, Master Name Index (MNI), or Arrest Notification CJIS Response, a subsequent sample shall not be taken pursuant to N.J.S.A 53:1-20.22(d).

Further, pursuant to N.J.S.A. 53:1-20.20(h), "every juvenile adjudicated delinquent, or adjudicated not delinquent by reason of insanity, for an act which, if committed by an adult, would constitute a crime or a specified disorderly persons offense shall have a blood sample drawn or other biological sample collected for purposes of DNA testing." "Specified disorderly persons offense" includes any disorderly persons offense relating to narcotics or dangerous drugs for which fingerprinting is required pursuant to N.J.S.A. 53:1-18.1, excluding possession of 50 grams or less of marijuana, including any adulterants or dilutants, or five grams or less of hashish under N.J.S.A. 2C:35-10; or any other disorderly persons offense for which fingerprinting is required pursuant to N.J.S.A. 53:1-15, excluding shoplifting (N.J.S.A. 2C:20-11).

If a disposition is imposed which requires detention or confinement, the sample shall be collected upon commencement of the sentence. Otherwise, the juvenile shall provide a sample as part of the disposition ordered by the court. *See* N.J.S.A. 53:1-20.20(h). Juveniles incarcerated or detained for qualifying offenses are required to provide a sample before termination of imprisonment, detention, supervision, or confinement. N.J.S.A. 53:1-20.20(h). The County Prosecutor has the discretion to designate which law enforcement agency is responsible for post-adjudication DNA collection.

- E. ***Complaint entry in eCDR.*** After accessing the "Juvenile Central Registry" tab, the officer chooses the juvenile's Live Scan record from the list displayed in eCDR. For cases where fingerprints are not required, but the juvenile has a prior record, the officer shall select the juvenile from the list displayed, being sure to match identifiers. In cases where fingerprints are not statutorily required and the juvenile has no prior record, the officer shall manually complete the eCDR data fields. The Live Scan record should always be selected when available, as this selection will automatically populate many of the eCDR data fields.

#### **IV. Pre-Charge Juvenile Case Screening**

- A. ***On-call prosecutorial screening/approval system.*** Each County Prosecutor's Office already has an established system of on-call Assistant Prosecutors available on a 24/7 basis to provide real-time legal advice and charging approvals to law enforcement officers.<sup>14 15</sup> Those assigned on-call duty shall have sufficient experience to perform the functions

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<sup>14</sup> For purposes of this Directive and as related to supervisory approval, the term "Assistant Prosecutor," just like "designee," may include an employee of the County Prosecutor's Office who has been specifically designated in writing by the County Prosecutor to perform on-call legal advice, review, and/or approval functions pursuant to this Directive.

<sup>15</sup> When the Division of Criminal Justice handles a case that requires guidance by way of this Directive, "County Prosecutor" shall refer to the Director of the Division of Criminal Justice and "Assistant Prosecutor" or "designee" shall refer to the Deputy Attorney General, Assistant Attorney General, or employee of the Division of Criminal Justice, specifically designated in writing to perform on-call legal advice, review, and/or approval functions pursuant to this Directive.

required. Advice and charging approvals provided by an on-call Assistant Prosecutor may occur in person or by means of telephonic or electronic communication. The County Prosecutor shall make contact information and procedures available to all agencies operating within the Prosecutor's jurisdiction.

A County Prosecutor may issue a directive that requires a designated Assistant Prosecutor to approve all juvenile complaints in eCDR, before they are submitted to the court. In cases requiring Assistant Prosecutor approval, the law enforcement officer must submit a draft juvenile complaint through eCDR to seek authorization to issue the summons or request a warrant. At that time, the County Prosecutor, or designee, can also recommend diverting the complaint to a stationhouse adjustment. A County Prosecutor may also issue a directive authorizing all police agencies operating within the Prosecutor's jurisdiction to issue a juvenile complaint provided it has been approved by a supervisory officer who possesses designated authority (Designated Supervisory Officer).

The County Prosecutor may impose such conditions or limits on the charging and approval authority granted to Designated Supervisory Officers (*e.g.*, authority to issue juvenile complaint for fourth-degree crimes and petty or disorderly persons offenses without prosecutorial approval; authority to charge without prosecutorial approval only in specified types of cases, etc.). The County Prosecutor may also request that a Designated Supervisory Officer, at the time of the charging decision, notify the County Prosecutor's Office, if the supervisory officer has reason to believe that the juvenile should be detained.

Any such directive shall specify whether and in what circumstances, if any, authority is granted to a Designated Supervisory Officer to approve the issuance of a complaint-summons when application for a complaint-warrant is presumed, and whether and in what circumstances, if any, authority is granted to a Designated Supervisory Officer to seek application for a complaint-warrant when issuance of a complaint-summons is presumed. The authority to overcome a presumption shall be granted to Designated Supervisory Officers only if the County Prosecutor determines, based on available resources, that such delegation of prosecutorial authority is necessary to prevent the Prosecutor's Office from being overburdened by charging consultations, and the Prosecutor shall remain responsible for ensuring that such delegated authority is exercised properly.

County Prosecutors are strongly encouraged to require pre-charging consultation to the greatest extent practicable consistent with existing resources. Prosecutorial consultation is especially important before the decision is made to apply for a complaint-warrant. If the County Prosecutor issues a directive pursuant to this subsection, a copy shall be provided to the Director of the Division of Criminal Justice. Furthermore, County Prosecutors who delegate charging approval authority are responsible for ensuring that all police departments and officers within their jurisdiction are properly trained to comply with this Directive.

Except with respect to the New Jersey State Police, the County Prosecutor, with the approval of the Chief of the police department, shall specify in writing those officer(s) in the department who are Designated Supervisory Officers for the purposes of this Directive and who (1) are authorized to review and approve charging decisions, and (2) are

authorized to overcome a presumption, after determining that such officers are qualified to perform those decision-making functions considering their duty assignment, experience, demonstrated judgment, and training. In the alternative, the County Prosecutor may specify a duty position within the department, in which event the officer in that duty position may be authorized to review and approve charging decisions.

With respect to the New Jersey State Police, if the County Prosecutor issues a directive pursuant to this subsection, the Superintendent shall specify in writing those members of the State Police who are Designated Supervisory Officers for purposes of this Directive and who (1) are authorized to review and approve charging decisions, and (2) are authorized to overcome a presumption, after determining that such State Police members are qualified to perform those decision-making functions considering their duty assignment, experience, demonstrated judgment, and training. In the alternative, the Superintendent may specify a duty position within a station in which event the member in that duty position may be authorized to review and approve charging decisions. Nothing in this paragraph limits a County Prosecutor's authority to impose conditions or limitations on the approval authority of a State Police member and/or duty assignment designated by the Superintendent.

Designated Supervisory Officers shall have authority to review/approve charging decisions only in cases from their own department. They shall not be authorized to review or approve a charging decision for any other agency.

V. **Determining Whether to Charge by Summons or Warrant**

- A. ***Presumption for complaint-summons.*** This Directive encourages police and prosecutors to charge by way of complaint-summons, rather than complaint-warrant, whenever that can be accomplished without jeopardizing public safety or welfare. Pursuant to New Jersey Court Rule 5:20-2, if there is probable cause to believe that a juvenile is delinquent, a law enforcement officer may issue a complaint-summons to the juvenile and their parent, guardian, or custodian. There is no need to apply to the court for a finding of probable cause. Once the complaint-summons is filed with the court, the law enforcement officer shall within five days personally serve the summons on the juvenile and their parent, guardian, or custodian without taking the juvenile into custody. *R. 5:20-2(a)*. If a law enforcement officer issues a summons, the juvenile will be released after processing and scheduled to return to court at a later date.

An Assistant Prosecutor or a Designated Supervisory Officer can overcome the presumption of a complaint-summons if they determine that an application for a complaint-warrant is reasonably necessary to protect the safety of a victim or the community, to reasonably assure the juvenile's appearance in court when required, or to prevent the juvenile from obstructing or attempting to obstruct the criminal justice process, and further determines that there is a lawful basis to apply for a complaint-warrant.

- B. ***Request for complaint-warrant and detention.*** In cases where immediate custody of the juvenile is required, a law enforcement officer may apply for a complaint-warrant. *R. 5:20-3*. A complaint-warrant may only be issued pursuant to *Rule 5:21-1(a)* where detention is

authorized by Court Intake Services (Juvenile Intake) or a judge. *R. 5:20-3(a)(1)*. Thus, when applying for a warrant, the officer is required to contact Juvenile Intake.

Juvenile complaints will be reviewed by Juvenile Intake in eCDR. Juvenile Intake will complete the juvenile detention Risk Screening Tool (RST)<sup>16</sup> to preliminarily determine if a juvenile should be detained. The RST assists Juvenile Intake with their recommendation for detention, however law enforcement and/or the Assistant Prosecutor can request detention or additional monitoring services, notwithstanding the recommendation.<sup>17</sup> Further, the RST does not restrict a judge's discretion to order the juvenile's detention at a future court appearance.

If Juvenile Intake declines detention, law enforcement may ask for an override of that decision. If the request is still denied, an Assistant Prosecutor can appear before the Family Court to apply for a complaint-warrant pursuant to N.J.S.A. 2A:4A-34(b). *See also R. 5:20-3*. Accordingly, when making the decision to apply for a complaint-warrant, it is important to consider any relevant facts or circumstances known or reasonably believed to exist that are not accounted for in Juvenile Intake's initial detention decision.

If detention is authorized by Juvenile Intake or a judge, a complaint-warrant shall immediately be filed as provided by *Rule 5:20-1. R. 5:21-1*. The officer taking the juvenile into custody shall immediately notify the juvenile's parent, guardian or custodian. *Ibid.*<sup>18</sup> The complaint-warrant shall be served upon the juvenile and their parent, guardian, or custodian.

C. ***When a complaint-warrant is mandatory.*** Guided by *Rule 3:3-1(e)*, a law enforcement agency must apply for a complaint-warrant if there is probable cause to believe that the juvenile committed any of the following offenses, *unless* consultation with an authorized Assistant Prosecutor or Designated Supervisory Officer determined that the presumption of charging by complaint-warrant is overcome and there are specific reasons which must be articulated in the case file:

1. Murder, N.J.S.A. 2C:11-3;
2. Aggravated manslaughter, N.J.S.A. 2C:11-4(a);
3. Manslaughter, N.J.S.A. 2C:11-4(b);

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<sup>16</sup> The RST is used for the initial detention request (complaint-warrant), and is not intended to bind the court's subsequent detention decisions.

<sup>17</sup> Law enforcement shall advise Juvenile Intake of all relevant information that should be factored into a decision for detention or enhanced monitoring services, especially all facts and circumstances that account for the strength of the case, the juvenile's prior involvement with the juvenile justice system, victim impact, pending charges, adjudications from another State, and any relevant information.

<sup>18</sup> A law enforcement officer may also take a juvenile into custody without process if the officer has probable cause to believe that the juvenile is delinquent as defined by N.J.S.A. 2A:4A-23. *R. 5:21-1*.

4. Aggravated sexual assault, N.J.S.A. 2C:14-2(a);
5. Sexual assault, N.J.S.A. 2C:14-2(b) or (c);
6. Robbery, N.J.S.A. 2C:15-1;
7. Carjacking, N.J.S.A. 2C:15-2;
8. Escape, N.J.S.A. 2C:29-5(a); *or*
9. An attempt or conspiracy to commit any of the foregoing crimes.

In addition, if the juvenile is in custody for an offense under New Jersey law and a judicial warrant has been issued against the juvenile by any federal agency or a law enforcement agency from this State or any other state, the law enforcement agency having custody of the juvenile shall apply for a complaint-warrant and advise the court of the circumstances.<sup>19</sup>

**D. *When there is a rebuttable presumption to seek a complaint-warrant.***

1. A law enforcement agency shall apply for a complaint-warrant if there is probable cause to believe that the juvenile has committed the following offenses, *unless* consultation with an authorized Assistant Prosecutor or a Designated Supervisory Officer determines that the presumption of charging by complaint-warrant is overcome:
  - a. Witness tampering/retaliation, N.J.S.A. 2C:28-5;
  - b. Witness obstruction, N.J.S.A. 2C:29-3(b)(3);
  - c. Witness tampering, N.J.S.A. 2C:29-3(a)(3);
  - d. Eluding that constitutes a second-degree crime, N.J.S.A. 2C:29-2(b);
  - e. Third-degree assault on public officials or employees, N.J.S.A. 2C:12-1(b)(5);
  - f. Photographing, filming, sexual exploitation, or abuse of a child, N.J.S.A. 2C:24-4(b)(4) or (b)(5);
  - g. Violation of Chapter 35 of Title 2C that constitutes a first- or second-degree crime;

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<sup>19</sup> Consistent with the Interstate Compact for Juveniles, N.J.S.A. 9:23-1 et seq.,

Any juvenile, charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found, provided that the underlying offense is designated a crime in this State. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition.

[N.J.S.A. 9:23-1.2.]



- h. A crime involving the possession or use of a firearm;
  - i. Vehicular homicide, N.J.S.A. 2C:11-5;
  - j. Aggravated assault that constitutes a second-degree crime, N.J.S.A. 2C:12-1(b);
  - k. Disarming a law enforcement officer, N.J.S.A. 2C:12-11;
  - l. Kidnapping, N.J.S.A. 2C:13-1;
  - m. Aggravated arson, N.J.S.A. 2C:17-1(a);
  - n. Second-degree burglary, N.J.S.A. 2C:18-2;
  - o. Extortion, N.J.S.A. 2C:20-5;
  - p. Booby traps in manufacturing or distribution facilities, N.J.S.A. 2C:35-4.1(b);
  - q. Strict liability for drug induced deaths, N.J.S.A. 2C:35-9;
  - r. Terrorism, N.J.S.A. 2C:38-2;
  - s. Producing or possessing chemical weapons, biological agents, or radiological devices, N.J.S.A. 2C: 38-3;
  - t. Racketeering, N.J.S.A. 2C:41-2;
  - u. Firearms trafficking, N.J.S.A. 2C:39-9(i);
  - v. Causing or permitting a child to engage in a prohibited sexual act, N.J.S.A. 2C:24-4(b)(3); *or*
  - w. An attempt or conspiracy to commit the crimes enumerated above.
2. A law enforcement agency shall also apply for a complaint-warrant, *unless* an Assistant Prosecutor or a Designated Supervisory Officer determines that the presumption of charging by complaint-warrant is overcome, in cases where the present offense was committed:
- a. While the juvenile was presently released for any other crime or disorderly persons offense;
  - b. While the juvenile was on probation, participating in the Juvenile Intensive Supervision Program (JSP), under supervision of a residential program, or under Megan's Law pursuant to N.J.S.A. 2C:7-2; *or*
  - c. When the juvenile was recently adjudicated, meaning within the past twelve months, for an offense involving a firearm or a first- or second-degree offense.

Nothing in this subsection shall be construed to preclude consideration of other adjudications of delinquency, when determining if a complaint-warrant should be requested.

- E. ***Overcoming the mandatory or presumptive complaint-warrant.*** In any case where a complaint-warrant is mandatory, or there is a presumption of applying for a complaint-warrant, a law enforcement agency shall apply for a complaint-warrant unless an Assistant Prosecutor or a Designated Supervisory Officer determines that: a) the physical safety of persons or property would not be seriously threatened if the juvenile were not detained; and b) detention is not necessary to secure the appearance of the juvenile at future court proceedings. In making this determination, the Assistant Prosecutor or a Designated Supervisory Officer shall consider whether there are reasonable assurances that if the juvenile were to be charged by a complaint-summons, they will appear in court when required, the safety of any other person or the community will be protected, and the juvenile will not obstruct or attempt to obstruct the criminal justice process. If the determination is made to overcome the presumption of applying for a complaint-warrant, the Assistant Prosecutor or a Designated Supervisory Officer shall document the reasons for that decision in the case file.
- F. ***Short-term custody and the six-hour rule.*** According to N.J.S.A. 2A:4A-31(a), a juvenile may be taken into custody either pursuant to an order or warrant from a court with jurisdiction, or for delinquency by law enforcement, pursuant to the laws of arrest and the Rules of Court. Except where delinquent conduct is alleged, a juvenile may be taken into short-term custody without a court order when:
1. An officer has reasonable grounds to believe that the health and safety of the juvenile is seriously in danger and taking them into immediate custody is necessary for their protection;
  2. An officer has reasonable grounds to believe the juvenile has left the home and care of their parent or guardian without their consent; *or*
  3. An agency legally charged with the supervision of a juvenile notifies law enforcement that the child has run away from the out of home placement.

[N.J.S.A. 2A:4A-31(b).]

Pursuant to N.J.S.A. 2A:4A-32(a), under no circumstances shall any juvenile taken into short-term custody be held for more than six hours. Short term custody begins once a juvenile has entered a police department, and does not include when a juvenile is being held at the scene or while in transport.<sup>20</sup> For delinquency complaints, the six-hour timeframe includes the duration of time required for processing and either release on a complaint-summons or transportation to a juvenile detention facility for a complaint-warrant. Therefore, law enforcement and prosecutors must ensure that these steps are

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<sup>20</sup> See N.J.A.C. 13:94-1.1 et seq., for provisions governing juveniles being taken into custody and limiting the amount of time a juvenile may be held in short-term custody.

completed as expeditiously as possible, but in no event longer than six hours from the time custody begins.<sup>21</sup>

## VI. Continued Pretrial Detention

- A. ***Requests for continued pretrial detention.*** Under *Rule* 5:21-3, an initial detention hearing will be scheduled for juveniles detained on warrants for a preliminary probable cause review and to determine whether continued pretrial detention is required pursuant to *Rule* 5:21-5. In determining whether to seek continued pretrial detention, the Assistant Prosecutor should consider the standards established by law. The court may detain a juvenile charged with delinquency eleven years of age or older, if any of the following criteria are present:<sup>22</sup>
1. Detention is necessary to secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent willful failure to appear at juvenile court proceedings or to remain where placed by the court,<sup>23</sup> or the juvenile is subject to a current warrant for failure to appear at court proceedings that was active at the time they were taken into custody; *or*
  2. The physical safety of persons or property in the community would be seriously threatened if the juvenile were not detained and the juvenile is charged with an offense which, if committed by an adult, would constitute a crime of the first, second, or third degree, or one of the following crimes of the fourth degree: aggravated assault; stalking; criminal sexual contact; bias intimidation; failure to control or report a dangerous fire; possession of a prohibited weapon or device in violation of N.J.S.A. 2C:39-3; or unlawful possession of a weapon in violation of N.J.S.A. 2C:39-5; *or*
  3. For juveniles charged with an offense which, if committed by an adult, would constitute a crime of the fourth degree other than those enumerated in paragraph 2, or a disorderly persons or petty disorderly persons offense, or with an offense when the criteria for detention are not met, the juvenile may be temporarily placed in a shelter or other non-secure placement if a parent or guardian cannot be located or will not accept custody

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<sup>21</sup> In cases where law enforcement officers are seeking a complaint-warrant and detention of the juvenile, Juvenile Intake should be reminded of the six-hour time frame to effectuate placement.

<sup>22</sup> While juveniles under eleven years of age may be placed in detention if they are charged with an offense, which, if committed by an adult, would be a crime of the first- or second-degree, or arson, *see R. 5:21-5(b)*; N.J.S.A. 2A:4A-34(f), Assistant Prosecutors cannot seek detention for any juvenile twelve years of age or under without the express, prior approval of their County Prosecutor and the Director of the Division of Criminal Justice.

<sup>23</sup> Failure to appear at court proceedings or to remain where placed by the court is deemed recent if it occurred within the 12 months immediately preceding the detention hearing, or if it occurred 12 to 24 months preceding the detention hearing and the juvenile cannot demonstrate a record of voluntary compliance with subsequent court appearance and placement requirements. *See* N.J.S.A. 2A:4A-34(h).

of the juvenile.<sup>24 25</sup>

[N.J.S.A. 2A:4A-34(c). *See also* R. 5:21-5.]

- B. In making this finding, the court will consider the following factors, so Assistant Prosecutors should be prepared to address each factor in their applications for detention:
1. Nature and circumstances of the offense charged;
  2. Age of the juvenile;
  3. Juvenile's ties to the community;
  4. Juvenile's record of prior adjudications, if any; *and*
  5. Juvenile's record of appearance or nonappearance at previous court proceedings.

[R. 5:21-3(d); N.J.S.A. 2A:4A-34(e).]

- C. If detention continues after the initial detention hearing, then the court will conduct a probable cause hearing within two court days after the initial hearing, unless defense counsel waives the proceeding. R. 5:21-3(b). If probable cause is found at the hearing, and the juvenile's detention is continued, the court will continue to hold detention review hearings pursuant to Rule 5:21-3(c).

## **VII. Release Conditions and Seeking Revocation of Release**

- A. ***Conditions of release.*** When a juvenile is not detained, prosecutors can and should request that the court order specific release conditions or enhanced monitoring, in addition to those recommended by Juvenile Intake. An Assistant Prosecutor shall request that the court impose any other release conditions, where the prosecutor has reason to believe that such condition(s) is needed to: reasonably assure the juvenile's appearance in court; protect the community; and to prevent the juvenile from obstructing or attempting to obstruct the juvenile justice process. Specifically, Assistant Prosecutors should request no contact provisions whenever necessary.
- B. ***Notice to Assistant Prosecutor of suspected violations of release conditions.*** In the event that a law enforcement agency or officer has reason to believe that a juvenile has violated a condition of pretrial release, the agency or officer shall promptly notify the Assistant

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<sup>24</sup> Police and court personnel are tasked with making all reasonable efforts to locate a parent or guardian to accept custody of a juvenile prior to requesting or approving a juvenile's placement in a shelter or other non-secure placement. N.J.S.A. 2A:4A-34(c)(3).

<sup>25</sup> This may require a referral to the Division of Child Protection and Permanency.

Prosecutor handling the case. The Assistant Prosecutor shall promptly notify the Family Court of the circumstances of the violation, unless the Assistant Prosecutor determines that such notification would jeopardize an investigation or law enforcement operation, or endanger an officer or other person. The Assistant Prosecutor shall also promptly determine whether they should seek revocation of release or request additional conditions of release. Likewise, the Family Court should notify the Assistant Prosecutor when there is reason to believe that a juvenile has violated a condition of pretrial release. If the juvenile was in an alternative placement, the program should notify the Family Court and Assistant Prosecutor handling the case.

If the suspected violation occurred outside the jurisdiction of the County Prosecutor's Office handling the matter on which pretrial release conditions were imposed, the agency or officer detecting the violation may notify the Prosecutor's Office in their jurisdiction, and they will notify the Assistant Prosecutor handling the original case. If the violation would constitute a criminal offense if committed by an adult and two or more Prosecutor's Offices are involved, the Offices shall confer and coordinate their efforts to ensure the safety of the public and victim to the greatest extent possible.

- C. ***Seeking revocation of release.*** An Assistant Prosecutor should consider seeking to revoke release and to detain the juvenile pending trial when the juvenile has violated conditions of release or incurred new charges. An application to revoke release can be made even if the juvenile was originally charged on a summons. There is a presumption to seek revocation of release when there is a determination that the State will be able to present evidence at a hearing to justify revocation and factors are present requiring detention pursuant to N.J.S.A. 2A:4A-34(c) and *Rule* 5:21-5, as discussed above. Further consideration should be given as to whether the juvenile's release will obstruct, or attempt to obstruct, the criminal justice process, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or victim.
1. There is also a rebuttable presumption to seek revocation of release when the following conditions have been met:
    - a. There is probable cause to believe that the juvenile committed a new first- or second-degree offense or an offense committed with a firearm while on pretrial release;
    - b. There is probable cause to believe that a juvenile, while on pretrial release, removed, tampered with, or rendered inoperable an electronic monitoring device required as a condition of pretrial release; *or*
    - c. The juvenile violated a protective order, no contact order, or stalking order.
  2. However, no application to revoke is required, if a County Prosecutor, or designee, determines that:
    - a. The risks posed by the juvenile's release can be controlled adequately by seeking enhanced release conditions and monitoring; *or*

- b. The interests of justice would not be served by applying for revocation of release.
3. If the determination is made to overcome the presumption of seeking revocation of release, the County Prosecutor, or designee, shall document the reason(s) for that decision in the case file. Nothing in this section shall be construed to preclude the State from also seeking initial pretrial detention on new charges pursuant to this Directive.

## **VIII. Post-Charge Diversion**

- A. ***Prosecutorial discretion to consent to diversion.*** In an effort to revisit opportunities for diversion, an Assistant Prosecutor can recommend post-charge diversion of a juvenile complaint, inclusive of diverting the complaint to a stationhouse adjustment or referring the case to the Intake Service Conference, the Juvenile Conference Committee, or the Family Crisis Intervention Unit. Diversion should be a strong consideration in cases not warranting formal adjudication based upon the principles discussed in this Directive.

In determining whether to refer a case to the Intake Service Conference, the Juvenile Conference Committee, or the Family Crisis Intervention Unit during the post-charge screening process, the Assistant Prosecutor should consider the factors that the court will use to determine whether diversion is appropriate under N.J.S.A. 2A:4A-71(b):

1. The seriousness of the alleged offense or conduct and the circumstances in which it occurred;
2. The age and maturity of the juvenile;
3. The risk that the juvenile presents as a substantial danger to others;
4. The family circumstances, including any history of drugs, alcohol abuse or child abuse on the part of the juvenile, his parents or guardian;
5. The nature and number of contacts with court intake services and the court that the juvenile or his family have had;
6. The outcome of those contacts, including the services to which the juvenile or family have been referred and the results of those referrals;
7. The availability of appropriate services outside referral to the court;
8. Any recommendations expressed by the victim or complainant, or arresting officer, as to how the case should be resolved;
9. Any recommendation expressed by the county prosecutor;
10. The amenability of the juvenile to [participate] in a remedial education or counseling program that satisfies the requirements of subsection b. of section 2 of P.L.2011, c. 128

(C.2A:4A-71.1) if the offense alleged is an eligible offense as defined in subsection c. of section 2 of P.L.2011, c. 128 (C.2A:4A-71.1); *and*

11. Any information relevant to the offense in any case where the juvenile is charged with an act which, if committed by an adult, would constitute prostitution in violation of N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking.

If the offense appears to be related to the use or possession of a controlled dangerous substance or alcohol, the Assistant Prosecutor *shall not* recommend diversion *unless* the County Prosecutor, or designee, reviews all relevant information regarding the juvenile's history of substance use or dependency, and checks that any proposed treatment plan to be used in diversion, where needed, memorializes proper referrals and recommendations to address the juvenile's medical and mental health needs. *See* Section II.E. Again, these conditions are not to deter diversion, but to ensure the juvenile will be provided all the necessary services to combat the disease of addiction.

- B. ***Discretion to divert cases notwithstanding the juvenile's prior adjudication or diversion.*** Prosecutors should not automatically refuse to consent to diversion of a case, either initially or post-charge, based solely upon the fact that the juvenile previously had been adjudicated or diverted from formal adjudication. The manner in which prior allegations of delinquency were handled is relevant only in determining whether diversion of current charges will be effective in achieving the objectives of the juvenile justice system, including the interests of public safety. This Directive specifically permits consideration of a stationhouse adjustment and other forms of diversion for juveniles with prior formal charges and/or prior diversion.

In determining whether to consent to the diversion of present charge(s), where there has been prior diversion or adjudications, Assistant Prosecutors in exercising their discretion should consider all relevant circumstances, including but not limited to:

1. The nature and seriousness of the prior charges;
2. The rehabilitative services that were provided to the juvenile during their prior involvement with the juvenile justice system;
3. Whether different rehabilitative services will be provided if the present charges were to be diverted;
4. Risk that the juvenile presents a substantial danger to others;
5. The nature and seriousness of the present offenses(s);
6. The amount of time that elapsed between the prior adjudication/diversion and the present alleged offense;
7. The interests of any victim of the present offense(s);

8. Any evaluations of the juvenile conducted by social service agencies, if available; *and*
9. The interests of public safety, considering the likelihood that diversion of the present charge(s) would be successful in preventing the juvenile from committing additional offenses.

## **IX. Other Considerations**

- A. ***Preparing the Affidavit of Probable Cause and Preliminary Law Enforcement Incident Report.*** The Affidavit of Probable Cause and Preliminary Law Enforcement Incident Report (“PLEIR”) are available electronically through juvenile eCDR. The Affidavit of Probable Cause is required in all cases, and shall include a description of relevant facts and circumstances that support probable cause to believe that the offense(s) was committed and it was committed by the juvenile. The Affidavit shall include a concise statement as to the officer’s basis for believing that the juvenile committed the offense(s) and shall indicate whether a victim was injured and, if so, the extent of the injury known to the officer submitting the Affidavit. The Affidavit should not direct the reader to other documents by stating, “see attached.”

Further, law enforcement officers are encouraged to prepare a PLEIR, but doing so is not required. County Prosecutors retain the authority to require the preparation of a PLEIR by any law enforcement officer subject to the prosecutor’s jurisdictional authority. A PLEIR is intended to document basic information known to the officer preparing the report at the time charges are filed. The fact that the officer preparing a PLEIR does not check a “check-off” box should not be construed to mean that such fact or circumstance does not exist, but rather only that the officer at the time of completing the PLEIR does not have sufficient basis, or immediate need, to indicate the existence or non-existence of such fact or circumstance. The information documented in the PLEIR can be supplemented, clarified, or modified, as additional information is learned or corroborated in the course of the ongoing investigation/prosecution. A PLEIR shall be in addition to, not in lieu of, any regular police arrest, incident, or investigative report(s) prepared pursuant to the agency’s standard operating procedures, policy, practices, or at the prosecutor’s request.

Notably, it is important for the County Prosecutor’s Office to be provided and possess information that would facilitate contact with the victim.<sup>26</sup> However, the Affidavit of Probable Cause and the PLEIR should not contain confidential victim information.

- B. ***Complaints prepared before juvenile is in custody.*** There may be instances when a Prosecutor’s Office decides to issue a complaint against a juvenile who is not yet in custody. For example, the Prosecutor’s Office might seek a warrant for serious charges and eCDR will allow for law enforcement to request the warrant, Juvenile Intake will run the RST, and if detention is authorized, the process will be complete with the issuance of a complaint-warrant. Otherwise, a complaint-summons would issue.

In any case, where the determination is made by a Prosecutor’s Office to apply for a

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<sup>26</sup> Assistant Prosecutors should be cautious in having direct communication with a victim unless a detective is present to avoid the possibility that the Assistant Prosecutor may become a witness in the case.



complaint before the juvenile is in custody, the Assistant Prosecutor shall apply other provisions/presumptions contained in this Directive in making the summons versus warrant determination, including ascertaining the juvenile's criminal history.

If a complaint-warrant is issued, the agency taking the juvenile into custody shall make certain the juvenile is fingerprinted in Live Scan, if statutorily required, and shall make certain that the fingerprint links to the juvenile and offense(s) for which a complaint has been issued, either electronically in eCDR, if available, or by contacting the Criminal Records Integrity and Compliance Unit (CRICU) of the New Jersey State Police.

If a complaint-summons is issued, the Prosecutor's Office shall make certain that the juvenile is fingerprinted, if required, in Live Scan on the date of the juvenile's first court appearance, or within a reasonable time after the filing of the complaint upon written request by the appropriate law enforcement agency pursuant to N.J.S.A. 53:1-15 and N.J.S.A. 53:1-18.1. The Prosecutor's Office shall further make certain that the fingerprint links to the juvenile and offense(s) for which a complaint-summons issued, either electronically in eCDR, if available, or by contacting the CRICU of the New Jersey State Police.

- C. ***Superseding juvenile complaint.*** Nothing in this Directive shall be construed to preclude a Prosecutor's Office from applying for a complaint-warrant for an offense previously charged by complaint-summons when further investigation reveals information that supports new or upgraded charges.
- D. ***Coordination of charging decisions when offenses are committed in multiple counties.*** There may be cases where a juvenile is charged with offenses committed in multiple counties. In those cases, it is important to coordinate the charging and request for detention decisions, so that one County Prosecutor's Office assumes primary responsibility for determining whether to apply for a complaint-summons, complaint-warrant, to request detention, seek release conditions, or move to revoke release. Accordingly, if a law enforcement officer has reason to believe that the juvenile may be charged with offenses committed in more than one county, the officer shall immediately contact the on-call duty Assistant Prosecutor, who shall contact the Prosecutor's Office(s) in the other counties where offenses were committed to coordinate charging and release decisions.
- E. ***When charges filed are different from charges initially entered into Live Scan.*** The Live Scan system requires the officer to indicate present offenses. There may be cases where the summons or warrant that is filed is different from the offenses that had initially been entered into Live Scan, or there may have been a decision not to charge all, or any, of the offenses proposed by the officer. Conversely, the Assistant Prosecutor or Designated Supervisory Officer (*See* Section IV.A above) may decide to upgrade the offense or add additional charges. In these cases, the charging agency shall modify the Live Scan record within the Live Scan system to reflect the appropriate changes, retransmit the modified Live Scan record, and contact the CRICU of the New Jersey State Police to make certain that the CCH system accurately reflects the charges that were actually filed. In cases where fingerprints were taken but the case was then referred for a stationhouse adjustment, the officer must contact CRICU to make sure the prints are removed from the CCH system.

- F. ***Juvenile waiver cases.*** In the event that a juvenile is waived to adult court pursuant to N.J.S.A. 2A:4A-26.1 (involuntary waiver) or N.J.S.A. 2A:4A-27 (waiver at election of juvenile), the Assistant Prosecutor shall make certain that a new complaint-summons (CDR-1) or complaint-warrant (CDR-2) is filed with the adult court within twelve hours in accordance with *Rule 5:22-2(f)*. Note that if a waived juvenile is not charged by complaint-warrant, they are not an “eligible defendant” under Criminal Justice Reform, and thus would not be monitored by the pretrial services program or be subject to the possibility of pretrial detention. Accordingly, when the Prosecutor’s Office determines that the juvenile upon waiver should be charged as an adult by means of a complaint-warrant, the Assistant Prosecutor shall direct that a complaint-warrant be prepared. In deciding whether to issue a complaint-summons or to apply to the court for a complaint-warrant, the Assistant Prosecutor shall conduct the analysis as if the person originally had been arrested as an adult.
- G. ***Appeals.*** If a Prosecutor’s Office requests detention or seeks to revoke release of a juvenile and the court denies the application, the Prosecutor’s Office should consider all remedies, including the right to appeal if the Assistant Prosecutor believes release poses a threat to the health, safety, and welfare of those in the community. A stay pending leave to appeal should be requested. Denials of detention applications and revocations of release should be noted in the case file.
- H. ***Expediting forensic testing in detention cases.*** In cases where a juvenile is detained pretrial, the County Prosecutor, or designee, shall submit evidence for forensic analysis as promptly as possible, and request expedited testing. To conserve laboratory resources, in all cases - including those involving juveniles who are not detained - where the case is resolved prior to the completion of requested forensic testing, the Assistant Prosecutor shall within 24 hours of the resolution notify the Office of Forensic Science or other laboratory if no further testing is needed, or if testing is no longer needed on an expedited basis.
- I. ***Citizen’s Complaint.*** In any case where a citizen seeks to file a formal complaint against a juvenile, law enforcement should review the charge(s) for probable cause. If the law enforcement officer finds probable cause, they can enter the complaint-summons in eCDR and make sure to note that it is a private citizen’s complaint, and should select the box stating, “[t]he charge was based on the observations/statements made by an eyewitness(es)” on the PLEIR. If the law enforcement officer does not find probable cause, they can refer the case to the Prosecutor’s Office for legal review, whose decision is controlling.
- J. ***Designation of Juvenile Liaison Officer.*** Every law enforcement agency having patrol jurisdiction is required to designate one sworn officer to coordinate juvenile matters. This Juvenile Liaison Officer (JLO) should be designated based upon their training and experience. The JLO should be familiar with local resources and community-based programs available to assist juveniles and their families; shall be well-versed in the various diversionary programs available to divert youth from the juvenile justice system; and are tasked with staying up-to-date on legislative changes, and changes to policy and procedure regarding Juvenile Justice Reform. The JLO can also assist by building partnerships with non-profit and government-run community organizations to assist with the supervision of

stationhouse adjustment agreements. Information on how to contact a Department's JLO should be made public and placed on the agency's website, in order to provide this resource to families and the community.

**X. Other Provisions**

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- C. ***Training.*** Within 45 days of the issuance of this Directive, the Division of Criminal Justice shall develop a training program to explain the requirements of this Directive as they pertain to state, county, and local law enforcement agencies and officers. Such program shall be made available through the NJ Learn System or by other electronic means.
- D. ***Community outreach.*** Each County Prosecutor shall undertake efforts to educate residents within their jurisdiction about the provisions of this Directive, with a specific focus on strengthening trust between law enforcement and the public. These educational opportunities should be publicized and designed to maximize virtual attendance and community participation. Within 120 days of the issuance of this Directive, each County Prosecutor shall report to the Attorney General their plans for such public education efforts.
- E. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or designee.
- F. ***Supersession of prior directives.*** Any provision of any directive, guideline, or law enforcement manual issued by or under the authority of the Attorney General that is inconsistent with any provision of this Directive is hereby superseded to the extent of such inconsistency. In addition, this Directive repeals and supersedes the provisions of Attorney General Law Enforcement Directive No. 2008-2; the 1998 Attorney General Guidelines on Procedures for Collecting Juvenile Fingerprints and Photographs; and Attorney General Executive Directive No. 1990-1.

G. ***Effective date.*** This Directive shall take effect January 11, 2021. The provisions of this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



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Gurbir S. Grewal  
Attorney General

ATTEST:



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Veronica Allende  
Director, Division of Criminal Justice  
Dated: December 3, 2020

Appendix A

**Sample Stationhouse Adjustment Agreement**

*(Must be read to juvenile and parent/guardian/caregiver/designee)*

Agency: \_\_\_\_\_ County: \_\_\_\_\_

Case No.: \_\_\_\_\_ Date of Incident: \_\_\_\_\_

Officer: \_\_\_\_\_

Complainant/Victim: \_\_\_\_\_

Offense: \_\_\_\_\_

Juvenile: \_\_\_\_\_

Race/Ethnicity\*: \_\_\_\_\_ D.O.B.: \_\_\_\_\_ Age: \_\_\_\_\_ Gender (M/F/Non-Binary): \_\_\_\_\_

\*Select Caucasian, Black, Hispanic, Asian, American Indian, Other, or Unknown  
*If race/ethnicity is not apparent, ask the juvenile or their parent/guardian/caregiver/designee.*

Parent(s)/Guardian/Caregiver/Designee: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

---

I, \_\_\_\_\_, agree to have the matter listed above handled  
Juvenile  
through a stationhouse adjustment by the \_\_\_\_\_.  
Law Enforcement Agency

In order to successfully complete the stationhouse adjustment, I agree to abide by the following terms and conditions:

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 4. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 5. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I understand that if I do not abide by these terms and conditions, formal charges may be filed.

**Signatures/Approvals:**

*\*Victim/complainant participation is encouraged, it is not a requirement. Signatures or telephone authorization permitted, when applicable.*

Juvenile: \_\_\_\_\_

Parent/Guardian/Caregiver/Designee\*: \_\_\_\_\_  
(or telephone authorization)

Victim/Complainant\*: \_\_\_\_\_  
(or telephone authorization)

Officer/Detective: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Prosecutor/Designee whom approved, if required: \_\_\_\_\_

Appendix B

**Stationhouse Adjustment/Curbside Warning Quarterly Report**

**\* Please be advised that information provided on this report will be made publicly available.\***

Law Enforcement Agency/County: \_\_\_\_\_

Name of Person Completing Report: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

Reporting Year: \_\_\_\_\_

- Check Quarter:        1<sup>st</sup>    January 1 - March 31  
                              2<sup>nd</sup>    April 1 - June 30  
                              3<sup>rd</sup>    July 1 - September 30  
                              4<sup>th</sup>    October 1 - December 31

*Completed reports must be submitted to the Division of Criminal Justice electronically to [report@njdcj.org](mailto:report@njdcj.org) and to your County Prosecutor's Office by the 15<sup>th</sup> day of the month following the close of each quarter. Codes to be used for completing this form are listed in the instructions.*

**Curbside Warning Data**

Total Number of Curbside Warnings: \_\_\_\_\_

Of the total number of curbside warnings, law enforcement estimates the following per category, based on the informal nature of the contact with the juveniles:

<u>Age</u>	<u>Gender</u>
Ages 10 and under: _____	Male: _____
Ages 11-13: _____	Female: _____
Ages 14-15: _____	Non-Binary: _____
Ages 16-18: _____	
<u>Race/Ethnicity</u>	<u>Community Information (if known)</u>
Caucasian: _____	No. of juveniles who received more than 1 warning: _____
Black: _____	
Hispanic: _____	
Asian: _____	
American Indian: _____	
Other: _____	
Unknown: _____	

**Stationhouse Adjustment Data**

Age at Time of Offense	Race/Ethnicity (Enter Code)	Gender M/F/Non-Binary	Prior Contacts Y or N	Statutory Citation for Offense Adjusted (Statute Number)	Degree of Offense	Outcome (Enter Code)

*Please use additional sheets as necessary.*



## Instructions for Completing Quarterly Reports

**Please be advised that information provided on this report will be made publicly available.**

### Instructions for Completing Curbside Warning Data:

Total number of curbside warnings shall be provided. While specific demographic information will not be solicited, law enforcement shall estimate the age, gender and race/ethnicity of the juveniles they encounter, and shall also report the number of juveniles who received more than one curbside warning, if known.

### Instructions and Codes for Completing Stationhouse Adjustment Columns:

Complete one line for each stationhouse adjustment that is offered during the quarter. Stationhouse adjustments should be listed as refused, pending, or completed, either successfully or unsuccessfully.

Age	=	Enter age of juvenile at the time of the offense
Race/Ethnicity	=	Enter numerical code: <ol style="list-style-type: none"><li>1. Caucasian</li><li>2. Black</li><li>3. Hispanic</li><li>4. Asian</li><li>5. American Indian</li><li>6. Other</li><li>7. Unknown</li></ol>
Gender	=	Enter M, F, or Non-binary
Prior Contacts	=	Indicate “Y” or “N” for any prior juvenile delinquency complaints or stationhouse adjustments
Statutory Cite	=	Indicate statutory citation for most serious offense adjusted (identify the statute). Do not enter a text description such as “shoplifting,” or any internal code numbers your department may use. If the offense is an ordinance violation, write in “ordinance.”
Degree of Offense	=	Enter degree of offense adjusted
Outcome	=	Enter numerical code: <ol style="list-style-type: none"><li>1. Juvenile or Parent/Guardian/Caregiver/Designee Refused Participation</li><li>2. Pending</li><li>3. Successfully Completed</li><li>4. Juvenile either committed a new offense or did not complete terms of adjustment agreement, resulting in the filing of a juvenile delinquency complaint</li></ol>