

# Appellate Division Clarifies Process For Diversion Of Juveniles

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February 20, 2019 | by Matthew Troiano

On February 6, 2019, in the matter of *State of New Jersey in the Interest of C.F.*, the Appellate Division issued a published decision related to the procedure used by a Family Part judge in diverting a number of juvenile complaints.

The issue before the Appellate Division was whether a Family Part judge was permitted to divert a delinquency complaint from court action without affording the juvenile the opportunity to appear at the hearing. The Family Part judge determined that she was only was required to notice the State of the hearing. The Appellate Division disagreed.

This case involved the consolidation of three different juvenile matters (C.F., A.G., and T.S.). C.F. was charged as a juvenile with possession of less than fifty grams of marijuana and possession of drug paraphernalia, both of which are disorderly persons offenses if committed by an adult. A.G. and T.S. were both charged as juveniles on completely separate matters with possession of less than fifty grams of marijuana, also disorderly persons offenses.

The prosecutor screened the complaints filed against the three juveniles and referred their matters to the mandatory court calendar. Thereafter, consistent with the prosecutor's recommendations, intake services referred the complaints for court action.

The Family Part judge notified the State of her intention to divert the complaints for all three juveniles. The State objected. As a result, the Family Part judge held a hearing to address all three matters. The prosecutor appeared at the hearing, and objected to the judge's determination that the juveniles were not required to be present. The judge concluded that only the State, and not the juveniles, were required to be given the opportunity to be heard. The judge's justification for this decision was that

requiring the juveniles to appear in court would expose them to the formal court calendar, thereby defeating the purpose of diversion.

Because the juveniles were not present at the hearing, the prosecutor did not provide the judge with the reports related to the juveniles' arrests and thus, the judge was limited to the face of complaints. Nor did the judge possess any information about the juveniles' personal and family circumstances. Nevertheless, over the State's objection, the judge diverted all three complaints.

The State appealed, arguing that the Family Part judge erred by: (1) failing to notice the juveniles of the diversionary hearings; and (2) diverting the complaints without the benefit of full assessments by court intake services evaluating the juveniles' personal and family circumstances.

The Appellate Division reversed the Family Part judge's decision and remanded for further proceedings. In their decision, the Appellate Division went through the due process rights afforded to juveniles, which include all rights guaranteed to criminal defendants by the United States and New Jersey Constitutions, with the exception of the right to indictment, the right to trial by jury, and the right to bail. The Appellate Division also reiterated that in the context of delinquency proceedings, juveniles are entitled to representation by counsel, specifically, the right to counsel at every critical stage of the juvenile proceeding, which begins with the filing of a juvenile complaint.

The procedure for the filing of complaints and the actions taken therefrom are provided for in the New Jersey Court Rules and by statute. According to N.J.C.R. 5:20-1 and N.J.S.A. 2A:4A-71, after a juvenile complaint is filed, the complaint is reviewed by court intake services for a recommendation as to whether the complaint should be dismissed, diverted or referred for further court action. In short, diversion occurs when a matter is referred to a Juvenile Conference Committee (JCC) or Intake Services Conference (ISC) rather than court. JCC is comprised of trained citizen volunteers appointed by the court. ISC is conducted by court staff. Upon successful completion of JCC or ISC, the case may be dismissed.

Certain categories of complaints are required to be referred for court action unless the prosecutor consents to diversion. Those complaints include crimes which, if committed by an adult, would be first,

second, third or fourth degree crimes, or an allegation of a repetitive disorderly persons offense, or any disorderly persons offense involving Controlled Dangerous Substances (Chapter 35) or Drug Paraphernalia (Chapter 36).

Once referred for court action, the Family Part judge would then have the authority to divert certain complaints. In making that decision, the judge will take into consideration the recommendation of court intake services, who are required to consider a number of factors pursuant to N.J.S.A. 2A:4A-71, which include the nature of the crime or offense alleged, the juvenile and his or her history and circumstances, the services available, and the recommendation of the prosecutor. Court intake services is required to advise the judge and the prosecutor of their recommendations.

However, if the complaint alleges conduct which, if committed by an adult, would constitute a crime or “a repetitive disorderly persons offense,” the matter cannot be diverted unless the prosecutor consents.

According to N.J.S.A. 2A:4A-72, in determining whether to divert the case, the court has the discretion to hold a hearing. However, in the event that a hearing is held, the court is required to give notice of the hearing to the juvenile, his parents or guardian, the prosecutor, arresting police officer and complainant or victim. Each party shall have the right to be heard on the matter.

Upon review of the relevant Court Rules and statutes, the Appellate Division concluded that once C.F., A.G., and T.S.’s complaints were referred for court action, that “action” required the juveniles be given notice to appear at their diversionary hearings. Because the Family Part judge conducted the hearings without their knowledge, they were not afforded an opportunity to appear and confer with counsel to determine how best to proceed. For example, the juveniles could have asserted any number of procedural or substantive rights, to include an assertion of innocence, a request for a dismissal, a speedy trial argument, or any other available defenses.

The Appellate Division noted that it appeared that the Family Part judge’s failure to afford the juveniles an opportunity to appear at the hearing was borne of her *parens patriae* role to protect them from the formalities of court proceedings. However, once intake services referred the complaints for court action, the juveniles had a right to appear and to be represented at the hearing.

The Appellate Division reversed and remanded the matter to the Family Part. The Appellate Division required the complaints be returned to court intake services to conduct a complete review of the relevant factors. The Appellate Division also required a hearing with notice to the prosecutor, the juveniles and their parents, guardians or custodians. Lastly, the Appellate Division ordered that the matters be assigned to a different Family Part judge.