TOWN OF PEMBROKE
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Gary R. Gaskell
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October 23, 2023

N.H Supreme Court
Advisory Committee on Rules
1 Charles Doe Drive
Concord, NH 03301
(via email attachment to rulescomment@courts.state.nh.us)

Re: 2023-012 N.H. R. of Crim. Pro. 1-19

Dear Committee Members:

I am the in-house prosecutor for the Pembroke Police Department and am submitting the following input for your review. Given that Pembroke is located within Merrimack County, I have read the proposed changes that County Attorney Paul Halvorsen has submitted and am in full agreement.

However, there are a few areas that I would like to delve into further, hence, this submission. Specifically, Circuit Court – District Division Rules 3, 4, and 12, as well as Circuit Court – Family Division Rule 3.3.

CIRCUIT COURT – DISTRICT DIVISION

Rule 3(d) – I have some concerns regarding the added language "after receiving notice of the hearing date". The section in which this new language is contained pertains to issuing a summons in lieu of arrest. Thus, if a defendant fails to appear for arraignment, s/he would have been summonsed (*i.e.* served) ***in hand*** with a court date. By using the proposed language instead, it begs the question – what constitutes "notice?" Will a summons, issued in hand, with a court date, suffice as "notice," or does it strictly apply to "Court Notices?" Meaning, will the State be able to still request a warrant be issued for someone who fails to appear for an arraignment date that was listed solely on a summons served in hand? This is particularly worrisome when taken together with the same proposed language as outlined in Rule 3(i).

Rule 4(a)(1) – I would propose adopting CA Halvorsen's suggestions here, or, in an effort to be consistent with the DUI arraignment statute language, *see* RSA 265-A:3-a, use the language, "to the extent practicable." When complaints are filed, they are done so by Officers of the Court (*i.e.* members of the NH Bar), or sworn law enforcement personnel. We all do our best to get complaints into the court in a timely fashion, but sometimes, despite best efforts, we are not able to submit those complaints as early as the court might like. By placing an arbitrary deadline on those complaints, you run the risk of creating more work for everyone involved, including the court. When a complaint gets dismissed, as it presumably would, for failing to meet that deadline, it is done so without prejudice. Meaning, the State would then have to swear out another complaint, serve another complaint, file another complaint, the court would have to docket another complaint and so on. So, if the intent behind the proposed language is to make less work for the court, then I would argue that it has the potential to actually make more work all around. Thus, language that demonstrates the timeframe is a strong suggestion, rather than a demand, would be better suited to account for the situations when the required timeline simply is not feasible.

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Rule 12 – By striking the language "in misdemeanor and violation-level cases," you are, in effect, requiring the State to provide discovery for a felony-level offense between arraignment (*i.e.* "first appearance before the court") and the probable cause hearing. Our police department, like many others, would not be equipped to handle sending redacted discovery on felonies within 10, or even 30, days, as outlined by the new proposed scheduling deadline for felony probable cause hearings. Moreover, where I will not be prosecuting those felonies, I do not want to be making the decisions on what information I feel should be sent, redacted, or need a court order to disclose; that is squarely within the purview of the County Attorney's Office. Additionally, if defense counsel believes that the State will have to provide discovery in advance of probable cause hearings, then what incentive do they have to waive probable cause? This alone could result in probable cause "fishing expeditions" with every felony case resulting in a full-blown hearing each time.

CIRCUIT COURT – FAMILY DIVISION

Rule 3.3(B) – Requiring the State to provide the voluntary needs assessment to the minor and his/her parent or counsel is absurd. First, the assessment is not our document and only created at the behest of our Legislature. It is a document created by DHHS in an effort to provide insight into what the juvenile delinquent might need in order to avoid court. By statute, DHHS is already required to provide that document to the minor, minor's parents/guardians, and minor's attorney, pursuant to RSA 169-B:10(e).

Secondly, we (the State) cannot use that document in court without permission of the juvenile, after consultation with his/her attorney. See N.H. Rev. Stat. Ann. § 169-B:10(f)("Absent the consent of the minor following consultation with counsel, the report and recommendations…shall not be used in any way by law enforcement during any portion of its investigation, nor shall they be admissible at an adjudicatory hearing…, proceedings pursuant to RSA 169-B:24, or adult criminal proceedings"). Thus, I fail to see how this document is *discoverable* when the State cannot use it without the express permission of the juvenile and his attorney.

Lastly, assuming that we would be required to provide it to the defense, what information would the State be required to redact because either way you view the answer, there are unintended consequences – *None of it because the information is coming from the juvenile anyway, in which case requiring the State to provide the report back to them is asinine, or all of it because the entire document is chock-full of confidential information, such as prior mental health diagnoses, past trauma incidents, school disciplinary information, prior police contacts, etc., resulting in significant unnecessary work for the prosecution to redact such a document that it then cannot use?*

In closing, I do hope that you consider the burdens placed upon the State when you determine whether to proceed forward with the proposed changes. Thank you for your time and attention to this matter.

Sincerely,

Alicia O'Rourke
Prosecuting Attorney
NH Bar # 17740