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New Jersey Appeals Court: Juveniles are Entitled to a Hearing before they are Forced to Serve their Sentence in Adult Prison

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In New Jersey's juvenile court system, family court judges are invested with a great deal of discretion about what to do with juveniles who are adjudicated delinquent for committing acts that would constitute crimes had they been committed by an adult. For example, depending on the facts and circumstances of each case, and surrounding each juvenile, the family court can allow a juvenile to serve a term of probation, can place him or her in the custody of a residential treatment program, and, in appropriate cases, commit the juvenile to the custody of the [Juvenile Justice Commission](#) to serve a term of confinement in juvenile facility. Juvenile facilities are typically more focused on a rehabilitative model than their adult prison counterparts. A central theme in juvenile facilities is that investing time and resources into a juvenile who seems to be on a wayward path may prevent future involvement in the criminal justice system as an adult. By comparison, adult correctional facilities these days are focused more on punishment than rehabilitation, with budgetary constraints limiting available programming for adult defenders even more.

However, New Jersey Law allows the Juvenile Justice Commission, without the permission of the court, to transfer a juvenile offender serving a sentence to an adult prison if a number of conditions are present. The enabling statute, N.J.S.A. 52:17B-175(e) permits the Juvenile Justice Commission and the State Department of Corrections (which is responsible for operating adult corrections facilities) to establish procedures to transfer custody of any juvenile incarcerated in a juvenile facility whose continued presence in the juvenile facility threatens the public safety, the safety of juvenile offenders, or the ability of the Juvenile Justice Commission to operate its program in the manner intended. Following the enactment of this statute, an administrative regulation was adopted setting forth the standards to be considered and whether a particular juvenile should be transferred from the custody of the Juvenile Justice Commission to the Department of Corrections. However, these regulations do not provide for any notice to the juvenile or an opportunity to object.

In a recent decision of the Superior Court, Appellate Division, *State in the Interest of J.J.*, the court considered the case of a juvenile who had been transferred from a juvenile facility to an adult prison, pursuant to the above statute and its implementing regulation. In this case, one day the juvenile was simply told that he was being transferred to an adult facility, and was immediately taken there. He had no prior notice that the Juvenile Justice Commission was seeking to transfer him, nor did he have the chance to object or to submit any additional information for consideration. Upon challenging the transfer in court, the Appellate Division ruled that the regulations allowing for a transfer from a Juvenile Justice Commission facility to an adult prison were invalid because they failed to afford the juvenile notice, and an opportunity to be heard. The court noted that:

At a minimum, before a juvenile could be transferred to custody of the DOC, there must be a written notice of the proposed transfer and the supporting factual basis, an impartial decision maker, an opportunity to be heard and to present opposition, some form of representation, and written findings of fact supporting a decision to proceed with the transfer.

The court did not specify who the impartial decision maker must be, or the form of representation to which the juvenile is entitled. The answers to these questions will be answered in the first place by new regulations that

will be adopted to make the present regulations consistent with the constitutional rights that the court found are implicated in transfers of juveniles to adult prisons.

This decision is a welcomed development, and will serve to bring fairness to a process that previously permitted decisions to be made by juvenile justice and correctional officials without any input on behalf of the juvenile. Juveniles serving a term in custody in a facility run by the Juvenile Justice Commission at least have the prospect of receiving the benefits of rehabilitative programs offered there. Transferring juvenile offenders to serve their sentences in adult prisons largely removes the prospect of rehabilitation, and is likely to have a profound and lasting impact on a juvenile's ability to refocus his or her conduct into that of a law abiding person. It is entirely proper that before such an important and potentially life-changing decision is made, the juvenile and a representative be entitled to challenge whether such a transfer is appropriate.

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