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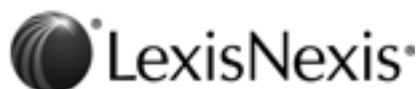
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1 of 3 DOCUMENTS

STATE OF NEW JERSEY IN THE INTEREST OF P.M.P.

A-63 September Term 2008

SUPREME COURT OF NEW JERSEY

2009 N.J. LEXIS 811

April 28, 2009, Argued

July 29, 2009, Decided

PRIOR HISTORY: [*1]

On appeal from the Superior Court, Appellate Division, whose opinion is reported at *404 N.J. Super. 69, 960 A.2d 758 (2008)*.

State ex rel. P.M.P., 404 N.J. Super. 69, 960 A.2d 758, 2008 N.J. Super. LEXIS 247 (App.Div., 2008)

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant was charged with sexual assault, which he allegedly committed when a juvenile. The trial court granted his motion to suppress his statement on grounds his right to counsel under *U.S. Const. amend. VI* was violated. The New Jersey Superior Court, Appellate Division, granted the State's motion for leave to appeal and reversed. Defendant was granted leave to appeal.

OVERVIEW: A juvenile delinquency complaint was filed against defendant, then 20, for an illegal act he allegedly committed as a teenager. A detective and an assistant prosecutor appeared before a family court to request an arrest warrant, which was duly issued. The next day, police arrested defendant, transported him to the prosecutor's office, Mirandized him, and obtained a confession. The trial court held that defendant's right to counsel attached when the complaint was filed, as it was substantially equivalent to an indictment. The intermediate appellate court disagreed; the difference between the juvenile justice system and the criminal court prohibited equating a juvenile complaint with an indictment. The high court did not reach this issue. It held

that the filing of the complaint and the obtaining of a judicially approved arrest warrant by the prosecutor's office was a critical stage in the proceedings, and pursuant to *N.J.S.A. § 2A:4A-39(b)(1)*, defendant had the right to counsel and could not waive that right except in the presence of and after consultation with his attorney. Therefore, the trial court properly granted defendant's motion to suppress his statement.

OUTCOME: The high court reversed the judgment of the intermediate appellate court and remanded for further proceedings.

LexisNexis(R) Headnotes

Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > Counsel

Criminal Law & Procedure > Counsel > Right to Counsel > Critical Stage

Criminal Law & Procedure > Counsel > Waiver > Proceedings

[HN1] The filing of a juvenile delinquency complaint and the obtaining of a judicially approved arrest warrant by the prosecutor's office is a critical stage in the proceedings, and pursuant to *N.J.S.A. § 2A:4A-39(b)(1)*, the defendant has the right to counsel and may not waive that right except in the presence of and after consultation with counsel.

Criminal Law & Procedure > Juvenile Offenders >

Juvenile Proceedings > General Overview

[HN2] New Jersey's Legislature grants to juveniles all defenses available to an adult charged with a crime, offense or violation. *N.J.S.A. § 2A:4A-40*. Further, except for the right to indictment, the right to a jury trial, and the right to bail, all rights guaranteed to criminal defendants by the Constitution of the United States and the Constitution of New Jersey are applicable to cases arising under the New Jersey Juvenile Code.

***Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Assistance of Counsel
Criminal Law & Procedure > Counsel > Right to Counsel > General Overview***

[HN3] *N.J. Const. art. I, para. 10* is consonant with the federal Constitution on the issue of when the right to counsel is triggered. Under federal law, the right to counsel attaches at the initiation of adversary judicial criminal proceedings against the defendant. This includes proceedings that are initiated by way of formal charge, preliminary hearing, indictment, information, or arraignment.

***Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > Scope of Protection
Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Assistance of Counsel
Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > Counsel
Criminal Law & Procedure > Counsel > Right to Counsel > General Overview***

[HN4] The United States Supreme Court has held that the Due Process Clause of the Fourteenth Amendment, *U.S. Const. amend. XIV*, requires that a juvenile and his parents must be notified of the juvenile's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the juvenile. Because juveniles can face loss of their physical liberty in juvenile proceedings, most of the protections afforded to adults facing similar losses of liberty should apply to juveniles.

***Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > Counsel
Criminal Law & Procedure > Counsel > Waiver > Proceedings***

[HN5] Pursuant to the New Jersey Code of Juvenile Justice, *N.J.S.A. §§ 2A:4A-20 to -49*, a juvenile has the

right to be represented by counsel at every critical stage in the proceeding. *N.J.S.A. § 2A:4A-39(a)*. During the delinquency proceeding, a juvenile may not waive any rights except in the presence of and after consultation with counsel, and unless a parent has first been afforded a reasonable opportunity to consult with the juvenile and the juvenile's counsel regarding the decision. *§ 2A:4A-39(b)(1)*.

Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > General Overview

[HN6] Where a case concerns a juvenile delinquency complaint, the New Jersey Juvenile Code and New Jersey Court Rules regarding juveniles apply to a defendant who is no longer a juvenile.

***Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Assistance of Counsel
Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > Counsel
Criminal Law & Procedure > Counsel > Right to Counsel > General Overview***

[HN7] Under the New Jersey Code of Juvenile Justice, *N.J.S.A. §§ 2A:4A-20 to -49*, a juvenile is entitled to have counsel at every critical stage of the proceeding which, in the opinion of the court, may result in the institutional commitment of the juvenile. *N.J.S.A. § 2A:4A-39(a)*.

***Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > General Overview
Criminal Law & Procedure > Accusatory Instruments > Complaints > General Overview******Criminal Law & Procedure > Counsel > Prosecutors***

[HN8] A juvenile delinquency complaint may be filed by anyone, but when a crime is alleged in the complaint, the prosecutor's consent is needed before the court may divert the complaint. *R. 5:20-1(c)*. Thus, the prosecutor plays a heightened role when it is alleged that the juvenile committed conduct that, if committed by an adult, would be a crime. When the prosecutor's office files a juvenile complaint, it already has determined that it has a prima facie case against the defendant.

***Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Assistance of Counsel
Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > Counsel***

Criminal Law & Procedure > Interrogation > Miranda Rights > Voluntary Waiver

Criminal Law & Procedure > Counsel > Right to Counsel > General Overview

Criminal Law & Procedure > Counsel > Waiver > Proceedings

[HN9] *N.J.S.A. § 2A:4A-39* provides essentially the same safeguards to juveniles at every critical stage of the proceedings that *State v. Sanchez* provides for adults following indictment. That is, just as adult defendants following indictment may not waive their Miranda rights absent counsel, at every critical stage of the proceedings juveniles may not waive their Miranda rights except in the presence of and after consultation with counsel. § 2A:4A-39(b)(1).

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

State of New Jersey In the Interest of P.M.P.
(A-63-08)

Argued April 28, 2009 -- Decided July 29, 2009

WALLACE, JR., J., writing for a majority of the Court.

On February 19, 2004, the Lower Township Police Department contacted the Cape May County Prosecutor's Office with information that T.B. accused defendant P.M.P. of sexual assault. T.B. was born in April 1995, and P.M.P., who was twenty years old at the time of his arrest, was born in September 1987. T.B. claimed that the sexual assaults occurred one summer when she was either six or seven years old. Thus, P.M.P. would have been either thirteen or fourteen years old at the time of the assaults.

Detective Hand of the Cape May County Prosecutor's Office interviewed T.B. to confirm the veracity of the allegations made. She also [*2] called P.M.P. and pretended to be T.B. in a conversation. According to Detective Hand, P.M.P. believed he was talking on the phone to T.B. and apologized for his conduct. Following that conversation, the detective

prepared a juvenile delinquency complaint against the twenty-year-old P.M.P., alleging "an act of sexual conduct with T.B., for the purpose of sexually arousing or sexually gratifying himself or to humiliate or degrade T.B., when T.B. was less than thirteen years old, defendant being at least four years older than T.B., specifically by fondling the victim's genital[s] with his hand." After signing the complaint, the detective and an assistant prosecutor appeared before a Family Part judge to request an arrest warrant. The judge issued the warrant and suggested the State return with P.M.P. at nine o'clock the next morning for a detention hearing.

The following day, February 20, 2004, the police arrested P.M.P., transported him to the Prosecutor's Office, read him his *Miranda* rights and, after he waived those rights, obtained a statement from P.M.P. in which he admitted to having sex with T.B. Later that morning, the police presented T.B. to the trial judge for the detention [*3] hearing and the judge ordered P.M.P. detained.

P.M.P. eventually filed a motion to suppress his February 20, 2004 statement. The trial judge granted the motion, finding that the prosecutor's filing of a juvenile delinquency complaint was the functional equivalent of an indictment, and therefore, P.M.P.'s right to counsel attached when the complaint was filed. The trial judge referred to *State v. Sanchez*, which held that after indictment, a defendant may not waive the right to counsel without approval of counsel. The judge concluded that the interrogation of P.M.P. without the presence of counsel violated his Sixth Amendment Right to counsel.

The Appellate Division granted the State's motion for leave to appeal and reversed the decision of the trial court, holding that the fundamental difference between the procedures and goals of the juvenile justice system and the criminal court prohibit equating a juvenile complaint with an indictment.

The Supreme Court granted P.M.P.'s motion for leave to appeal.

HELD: The filing of the complaint and the obtaining of a judicially approved arrest warrant by the Camden County Prosecutor's Office was a critical stage in the proceedings, and pursuant to [*4] *N.J.S.A. 2A:4A-39(b)(1)*, P.M.P. had the right to counsel and could not waive that right except in the presence of and

after consultation with his attorney counsel. Therefore, the trial court properly granted P.M.P.'s motion to suppress his statement.

1. The New Jersey Legislature grants to juveniles all defenses available to an adult charged with a crime, offense or violation. Under federal law, the right to counsel attaches at the initiation of an adversarial judicial criminal proceeding against a defendant, which includes proceedings that are initiated through formal charge, preliminary hearing, information, indictment, or arraignment. In *Sanchez*, the Court held that after indictment, the State should not initiate conversation with a defendant without the consent of defense counsel. The Court noted that the indictment transforms the relationship between the State and defendant because the State has now represented that it has enough to establish a *prima facie* case and any questioning thereafter is just to buttress that case. *Miranda* warnings are insufficient to inform the defendant of the nature of the charges against him, the dangers of self-representation, or the steps an attorney [*5] might take to protect his interests. The U.S. Supreme Court in *In re Gault* held that the *Due Process Clause of the Fourteenth Amendment* requires that the juvenile and parents be notified of the right to counsel. (pp. 8-14)

2. Following *Gault*, the Legislature adopted the Code of Juvenile Justice. Under the Code, a juvenile has the right to be represented by counsel at every critical stage of the proceedings. In addition, under *N.J.S.A. 2A:4A-39(b)(1)*, a juvenile, during a delinquency proceeding, cannot waive any rights except in the presence of and after consultation with counsel and unless the parent has been afforded time to consult with the juvenile and the juvenile's counsel regarding that decision. A juvenile does not have the right to an indictment; therefore, the filing of the complaint by the Prosecutor's Office takes on added significance because, at that point, the prosecutor's has determined that it has a *prima facie* case, changing the prosecutor's from investigative to accusatory. Here, the significant level of involvement by the Prosecutor's Office and the judicially approved arrest warrant satisfied the "critical stage in the proceeding" necessary to trigger P.M.P.'s statutory [*6] right to counsel. (Pp. 14-16)

3. *N.J.S.A. 2A:4A-39* provides essentially the same safeguards to juveniles at every critical stage of the proceedings that *Sanchez* provides for adults following

indictment. Thus, in the absence of counsel, P.M.P. could not waive his *Miranda* rights. Thus, when the Prosecutor's Office initiated a juvenile complaint and obtains a judicially approved arrest warrant, a critical stage in the proceeding has been reached, implicating the juvenile's statutory right to counsel. The State's questioning of P.M.P. and the receipt of his statement in the absence of counsel at a critical stage in the proceedings violated his statutory right to have counsel present before a valid waiver could be obtained. Consequently, the trial judge properly granted P.M.P.'s motion to suppress his statement. (Pp. 16-17)

4. Because of the conclusion reached today, the Court need not address P.M.P.'s claim that the Prosecutor's Office circumvented the trial judge's order to produce the juvenile and did so in order to obtain a confession that it otherwise would have been prevented from obtaining. Nonetheless, if the Court were to find it necessary to reach this issue in order to resolve [*7] this matter, it would reject P.M.P.'s requested relief. (P. 17)

Judgment of the Appellate Division is **REVERSED** and the matter is **REMANDED** for proceedings consistent with this opinion.

COUNSEL: *Amira R. Scurato*, Assistant Deputy Public Defender, argued the cause for appellant P.M.P. (*Yvonne Smith Segars*, Public Defender, attorney).

Daniel I. Bornstein, Deputy Attorney General, argued the cause for respondent State of New Jersey (*Anne Milgram*, Attorney General of New Jersey, attorney; *Mr. Bornstein* and *J. Vincent Molitor*, Assistant Cape May County Prosecutor, on the briefs).

Christopher D. Adams submitted a brief on behalf of *amicus curiae* Association of Criminal Defense Lawyers of New Jersey (*Walder, Hayden & Brogan*, attorneys; *Mr. Adams* and *Leigh-Anne Mulrey*, of counsel).

Laura A. Cohen submitted a brief on behalf of *amicus curiae* Rutgers Urban Legal Clinic Rutgers School of Law-Newark, National Juvenile Defender Center, American Civil Liberties Union of New Jersey, Children's Justice Center Rutgers School of Law-Camden, and Northeast Juvenile Defender Center (*Urban Legal Clinic Rutgers School of Law-Newark*, attorneys).

JUDGES: JUSTICE WALLACE, JR., delivered the

opinion of the Court. CHIEF JUSTICE RABNER [*8] and JUSTICES LONG, LaVECCHIA, and ALBIN join in JUSTICE WALLACE'S opinion. JUSTICE RIVERA-SOTO filed a separate dissenting opinion in which JUSTICE HOENS joins.

OPINION BY: WALLACE, JR.

OPINION

JUSTICE WALLACE, JR., delivered the opinion of the Court.

In this case, a detective in the Prosecutor's Office prepared a juvenile delinquency complaint against a twenty-year-old defendant for unlawful conduct he allegedly committed as a teenager. After signing the complaint, the detective and an assistant prosecutor appeared before a Family Part judge to request an arrest warrant. The judge issued the warrant and suggested that the State return with defendant at nine o'clock the next morning for a detention hearing. The following day, the police arrested defendant, transported him to the Prosecutor's Office, read him his *Miranda*¹ rights, and obtained a statement from defendant in which he admitted to wrongdoing. Later that morning, the police presented defendant to the trial judge for the detention hearing.

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Defendant eventually filed a motion to suppress his statement. The trial judge granted his motion, finding that the prosecutor's filing [*9] of a juvenile delinquency complaint was the functional equivalent of an indictment, and therefore, defendant's right to counsel attached when the complaint was filed. The judge held that the interrogation of defendant without the presence of counsel violated defendant's Sixth Amendment right to counsel. The Appellate Division granted the State's motion for leave to appeal and reversed. We granted defendant's motion for leave to appeal and now reverse. We hold that [HN1] the filing of the complaint and obtaining of a judicially approved arrest warrant by the Prosecutor's Office was a critical stage in the proceedings, and pursuant to *N.J.S.A. 2A:4A-39(b)(1)*, defendant had the right to counsel and could not waive that right "except in the presence of and after consultation with counsel." *Ibid.*

I.

We derive our summary of the facts largely from the proofs presented at the suppression hearing. On February 19, 2008, the Lower Township Police Department contacted the Cape May County Prosecutor's Office with information that T.B. accused defendant of sexual assault. T.B. was born in April 1995, and defendant, who was twenty years old at the time of his arrest, was born in September 1987. T.B. claimed [*10] that the sexual assaults occurred one summer when she was either six or seven years old. Thus, defendant would have been either thirteen or fourteen years old at the time of the assaults.

Detective Ashlee Hand of the Cape May County Prosecutor's Office investigated the matter. She immediately conducted a video interview of T.B., in which T.B. confirmed the allegations. Later that day, Detective Hand telephoned defendant and pretended to be T.B. The first two minutes of the call were recorded, but due to a malfunction in the recorder, the remainder of the conversation was not. Detective Hand reported that defendant believed he was talking with T.B. and apologized for his conduct.

Following that conversation, Detective Hand, on behalf of the County Prosecutor's Office, prepared a juvenile delinquency complaint against defendant. The complaint declared that defendant committed "an act of sexual conduct with T.B., for the purpose of sexually arousing or sexually gratifying himself or to humiliate or degrade T.B., when T.B. was less than thirteen years old, defendant being at least four years older than T.B., specifically by fondling the victim's genital[s] with his hand."

Assistant Prosecutor [*11] Christine Smith, along with Detectives Hand and Dan Holt, then appeared before the Honorable Kyran Connor, J.S.C., in the Family Part. Detective Holt briefly outlined the allegations in the delinquency complaint and asked the judge for authority to detain defendant. The trial judge was familiar with defendant from a recent Division of Youth and Family Services (Division) matter. In that case, defendant was represented by counsel from the Parental Representation Unit of the Public Defender's Office, and the judge had approved the placement of defendant's son with him. The judge suggested that the State apprehend defendant on the complaint and bring him to court first thing the next day. The judge explained that

in the context of the hour and the fact that I think there's a household there that would be really disrupted seriously if - I have a juvenile matter I'm hearing, a first detention hearing, tomorrow morning at nine o'clock. But if you folks want to have him here right at nine, I'll hear you and we'll figure out what's the appropriate and safe thing to do. All right? Okay, thanks.

The judge then approved the issuance of a warrant in lieu of a summons for the police to apprehend [*12] defendant.

The next day, February 20, 2008, Detectives Hand and Holt executed the warrant and arrested defendant at his home. The detectives stated that defendant immediately responded, "I know why you are here. She called me last night." The detectives transported defendant to the Cape May County Prosecutor's Office where he was fingerprinted, photographed, and read his *Miranda* rights. Defendant waived his rights and agreed to speak to the detectives. During the interview, defendant admitted that he had sex with T.B., and that on another occasion he touched her private parts.

Around eleven o'clock that morning, the detectives transported defendant to the courthouse for a detention hearing. A deputy public defender represented defendant at the hearing. Based on the evidence presented, the judge ordered that defendant be detained.

Defendant filed a motion to suppress his statement of February 20, 2008. He argued that the State deliberately disregarded the court's order to produce him at nine o'clock a.m. to take advantage of the window of opportunity to interrogate him before he was assigned counsel in the matter. The State opposed the motion, asserting that defendant never invoked his [*13] right to counsel on February 20. The State also filed a motion to waive the matter to adult court.

The judge held a hearing on both motions on May 8, 2008. The State's proofs established that the incident occurred when the victim was six or seven years old. Because defendant would have been thirteen if the victim were six when the assaults occurred, the judge concluded that the State failed to prove that defendant was fourteen or older at the time of the offense. Consequently, the judge denied the State's motion to waive defendant to adult court.

In regard to defendant's motion to suppress, the judge found that the complaint filed by the Prosecutor's Office was "the substantial equivalent of a criminal indictment." The judge referenced *State v. Sanchez*, 129 N.J. 261, 609 A.2d 400 (1992), which held that after indictment a defendant may not waive the right to counsel without the approval of counsel. The judge reasoned that defendant's right to counsel attached at the time the complaint was filed, and therefore the State should not have initiated conversation with defendant without the consent of counsel. As a result, the judge suppressed defendant's statement.

The State sought and received a stay in [*14] the proceedings to seek leave to appeal the court's ruling on the suppression motion. The Appellate Division granted leave to appeal and reversed. *State ex rel. P.M.P.*, 404 N.J. Super. 69, 73, 960 A.2d 758 (2008). The panel focused on the State's argument that the order granting the suppression motion should be reversed because "the fundamental difference between the goals and procedures of the juvenile justice system and the criminal court prohibit equating a juvenile complaint with an indictment." *Id. at 76*, 960 A.2d 758. The panel emphasized the *parens patriae* role of the juvenile court and concluded that the existing due process protections, including the role of parents in the context of juveniles' custody and interrogation, are sufficient to "satisfactorily safeguard [] [the juvenile's] rights." *Id. at 78-80*, 960 A.2d 758. The panel also noted that in the unique facts of this case, defendant was an adult when arrested, did not challenge the validity of his *Miranda* waiver, and appreciated the significance of obtaining counsel because he was represented in the Division matter. *Id. at 81*, 960 A.2d 758.

We granted defendant's motion for leave to appeal. 197 N.J. 472 (2009). We granted *amicus curiae* status to the Association of Criminal [*15] Defense Lawyers of New Jersey (ACDL), and jointly to Rutgers Urban Legal Clinic, Rutgers School of Law-Newark; National Juvenile Defender Center; American Civil Liberties Union of New Jersey; Children's Justice Center, Rutgers School of Law-Camden; and Northeast Juvenile Defender Center (collectively the Rutgers Group).

II.

Defendant argues that under both the United States Constitution and New Jersey Constitution, his right to counsel attached when the prosecutor submitted the

delinquency petition to the trial judge, and that therefore, his uncounseled statement to the police was properly suppressed. He also contends that the Prosecutor's Office intentionally failed to comply with the trial judge's order to produce him in court at nine o'clock so that the State could question him before he was assigned counsel.

The State counters that the Appellate Division correctly reversed the trial judge's order granting defendant's motion to suppress. The State urges that a juvenile delinquency complaint is not the equivalent of an indictment, which is a fundamental constitutional right, because a juvenile complaint is governed by statute and is not of constitutional dimension. The State adds that, [*16] unlike an indictment issued by a grand jury, a complaint charging delinquency "may be signed by any person who has knowledge of the facts alleged to constitute delinquency or is informed of such facts and believes that they are true." *N.J.S.A. 2A:4A-30(a)*. In addition, the State notes that the goals of the juvenile system, which are primarily protection and rehabilitation, differ from the goals of the adult criminal justice system, which are primarily punitive. The State contends that the current safeguards and procedural protections available to juveniles during police interrogations are adequate to protect their rights. Furthermore, the State argues that the trial judge did not order that defendant be produced in court at nine o'clock, but merely suggested that time because court would be in session.

Amicus ACDL urges that the trial court correctly determined that for the purposes of *N.J.S.A. 2A:4A-39*, a delinquency complaint filed at the direction of a county prosecutor's office is the substantial equivalent of an indictment. ACDL contends that the complaint initiates formal adversarial proceedings and therefore triggers defendant's Sixth Amendment right to counsel. ACDL adds that [*17] the Appellate Division's decision ignored the State's protective mission concerning juvenile offenders.

Amicus the Rutgers Group urges that legislation, court rules, and case law in other jurisdictions support the conclusion that a juvenile's right to counsel attaches, at the latest, when a complaint is filed. The Rutgers Group contends that recent studies in adolescent brain development indicate that additional safeguards are needed to protect the due process rights of juveniles and argues that defense counsel should be present at all custodial interrogations of juveniles.

III.

A.

Preliminarily, we note that [HN2] our Legislature grants to juveniles "[a]ll defenses available to an adult charged with a crime, offense or violation." *N.J.S.A. 2A:4A-40*. Further, except for the right to indictment, the right to a jury trial, and the right to bail, "[a]ll rights guaranteed to criminal defendants by the Constitution of the United States and the Constitution of this State . . . [are] applicable to cases arising under [the juvenile code]." *Ibid*.

We recently explained that [HN3] "*Article I, Paragraph 10 of the New Jersey Constitution* is 'consonant with the Federal Constitution on the issue of when the right [*18] to counsel is triggered.'" *State v. A.O.*, 198 N.J. 69, 82, 965 A.2d 152 (2009) (quoting *State v. P.Z.*, 152 N.J. 86, 110, 703 A.2d 901 (1997)). Under federal law, "the right to counsel . . . [attaches at] the initiation of adversary judicial criminal proceedings" against the defendant. *Rothgery v. Gillespie County, U.S.*, 128 S. Ct. 2578, 2583, 171 L. Ed. 2d 366, 374 (2008) (internal quotations and citation omitted). This includes proceedings that are initiated "by way of formal charge, preliminary hearing, indictment, information, or arraignment." *United States v. Gouveia*, 467 U.S. 180, 188, 104 S. Ct. 2292, 2297, 81 L. Ed. 2d 146, 154 (1984) (quoting *Kirby v. Illinois*, 406 U.S. 682, 689, 92 S. Ct. 1877, 1882, 32 L. Ed. 2d 411, 417 (1972) (plurality opinion)).

Although federal law provides that a defendant's Sixth Amendment right to counsel after indictment is "[no] more difficult to waive than the Fifth Amendment counterpart," *Patterson v. Illinois*, 487 U.S. 285, 297-98, 108 S. Ct. 2389, 2397, 101 L. Ed. 2d 261, 275 (1988), we parted company from that principle in *State v. Sanchez*, 129 N.J. 261, 276, 609 A.2d 400 (1992). We held in *Sanchez* that after indictment, the State "should not initiate a conversation with defendants [*19] without the consent of defense counsel." *Id.* at 277, 609 A.2d 400. In so holding, we noted that our state constitution guaranteed the right to counsel before the adoption of the *Sixth Amendment* and that New Jersey has provided counsel for indigent defendants since 1795. *Id.* at 274-75, 609 A.2d 400. We explained that "an indictment transforms the relationship between the State and the defendant" because "the State represents that it has sufficient evidence to establish a prima facie case." *Id.* at

276, 609 A.2d 400. We emphasized that from that point on, "[q]uestioning the accused can be only for the purpose of buttressing [] a prima facie case." *Ibid.* (quotations and citations omitted). Under those circumstances we concluded that *Miranda* warnings were insufficient to inform defendant of "the nature of the charges, the dangers of self-representation, or the steps counsel might take to protect the defendant's interests." *Id.* at 277, 609 A.2d 400. Thus, following indictment, the defendant may not waive his right to counsel without the advice of counsel. *Ibid.*

However, we declined to extend *Sanchez's* holding to an earlier stage in criminal proceedings, noting that to our knowledge no other jurisdiction "has applied the *Sanchez* principle to a [*20] stage earlier than the return of an indictment." *State v. Tucker*, 137 N.J. 259, 290, 645 A.2d 111 (1994). Nevertheless, we directed the Criminal Practice Committee to review our Court Rules "to determine whether amendments should be adopted that would require all defendants at first court appearances to indicate whether they are asserting their right to counsel or requesting the appointment of counsel." *Id.* at 291, 645 A.2d 111; see R. 3:4-2 (c) (1), (2), (3) (requiring that court inform defendant of complaint, right to remain silent, and right to counsel); see also *State v. A.G.D.*, 178 N.J. 56, 58, 65, 835 A.2d 291 (2003) (declining to extend *Sanchez* principle of non-waiver of *Miranda* warnings to period before indictment but after issuance of arrest warrant or filing of criminal complaint).

In *In re Gault*, 387 U.S. 1, 41, 87 S. Ct. 1428, 1451, 18 L. Ed. 2d 527, 554 (1967), [HN4] the United States Supreme Court held that the *Due Process Clause of the Fourteenth Amendment* requires that "the [juvenile] and his parents must be notified of the [juvenile's] right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the [juvenile]." The Court acknowledged its [*21] traditional *parens patriae* role to protect children, but concluded that because juveniles can face loss of their physical liberty in juvenile proceedings, most of the protections afforded to adults facing similar losses of liberty should apply to juveniles. *Id.* at 30, 87 S. Ct. at 1445, 18 L. Ed. 2d at 547-48.

Similarly, we have recognized that the State's predominate mission of rehabilitation of juvenile offenders has been augmented by punishment "as a component of the State's core mission with respect to

juvenile offenders." *State v. Presha*, 163 N.J. 304, 314, 748 A.2d 1108 (2000). In *Presha*, we held that in the context of a seventeen-year-old's Fifth Amendment challenge to the admissibility of his confession given after *Miranda* warnings, "the absence of a parent or legal guardian from the interrogation area [is] a highly significant fact" in determining whether a juvenile's waiver of rights was knowing, intelligent and voluntary. *Id.* at 308, 748 A.2d 1108. Moreover, we determined that "a special circumstance exists when a juvenile is under the age of fourteen," and in such a case "the adult's absence [would] render the young offender's statement inadmissible as a matter of law, unless the parent or legal guardian [*22] is truly unavailable." *Ibid.*

B.

Following the United States Supreme Court's decision in *Gault*, our Legislature adopted [HN5] the Code of Juvenile Justice. N.J.S.A. 2A:4A-20 to -49. Pursuant to the Code, a juvenile has the right "to be represented by counsel at every critical stage in the proceeding." N.J.S.A. 2A:4A-39(a). Importantly, during the delinquency proceeding, a juvenile "may not waive any rights except in the presence of and after consultation with counsel, and unless a parent has first been afforded a reasonable opportunity to consult with the juvenile and the juvenile's counsel regarding [the] decision." N.J.S.A. 2A:4A-39(b)(1).

Defendant urges that we affirm the trial court's conclusion that the juvenile complaint prepared by the Prosecutor's Office was the substantial equivalent of an indictment and therefore, consistent with the principles espoused in *Sanchez*, defendant may not waive his Sixth Amendment right to counsel unless he is represented by counsel.²

2 Although defendant is alleged to have committed the offense when he was thirteen or fourteen, he was twenty years old when he was arrested. However, because [HN6] this case concerns a juvenile delinquency complaint, the Juvenile Code [*23] and our Court Rules regarding juveniles apply to defendant.

We find no need to tackle that constitutional question because we are convinced that the Legislature has provided a statutory remedy. [HN7] Under the Code, a juvenile is entitled to have "counsel at every critical stage of the proceeding which, in the opinion of the court may

result in the institutional commitment of the juvenile." *N.J.S.A. 2A:4A-39(a)*. Thus, the question is whether the filing of the juvenile complaint by the Prosecutor's Office, followed by the issuance of a judicially approved arrest warrant, constitutes a "critical stage" such that the statutory right to counsel is implicated.

[HN8] A juvenile delinquency complaint may be filed by anyone, but when a crime is alleged in the complaint, the prosecutor's consent is needed before the court may divert the complaint. *R. 5:20-1(c)*. Thus, the prosecutor plays a heightened role when it is alleged that the juvenile committed conduct that, if committed by an adult, would be a crime. Indeed, when the Prosecutor's Office files a juvenile complaint, it already has determined that it has a prima facie case against the defendant. Consequently, because the juvenile does not have the right [*24] to indictment, the filing of the complaint by the Prosecutor's Office takes on added significance. At that point, the prosecutor's role has evolved from investigative to accusatory.

In the present case, the Prosecutor's Office investigated the victim's complaint, and based on its investigation, filed the juvenile complaint and sought an arrest warrant. The State had developed a prima facie case against defendant and was clearly an adversary to defendant. Certainly, any further questioning of defendant was for the purpose of buttressing the State's case against him. We conclude that under those circumstances, the significant level of involvement by the Prosecutor's Office and the judicially approved arrest warrant satisfied the "critical stage in the proceeding" necessary to trigger defendant's statutory right to counsel under *N.J.S.A. 2A:4A-39*.

The next question is whether the juvenile may nevertheless waive his right to counsel without the presence of counsel. Again, the Legislature has provided the answer. [HN9] *N.J.S.A. 2A:4A-39* provides essentially the same safeguards to juveniles at every critical stage of the proceedings that *Sanchez* provides for adults following indictment. That is, [*25] just as adult defendants following indictment may not waive their *Miranda* rights absent counsel, *see Sanchez, supra*, 129 *N.J. at 277*, 609 *A.2d 400*, at every critical stage of the proceedings juveniles may not waive their *Miranda* rights "except in the presence of and after consultation with counsel." *N.J.S.A. 2A:4A-39(b)(1)*. Consequently, in the absence of counsel, defendant could not waive his

Miranda rights.

In summary, we conclude that when the Prosecutor's Office initiates a juvenile complaint and obtains a judicially approved arrest warrant, a critical stage in the proceeding has been reached, implicating the juvenile's statutory right to counsel. The State's questioning of defendant and the receipt of his statement in the absence of counsel at a critical stage in the proceeding violated defendant's statutory right to have counsel present before a valid waiver may be obtained. Consequently, the trial judge properly granted defendant's motion to suppress his statement.

IV.

Defendant also argues that the Prosecutor's Office circumvented the trial judge's order to produce the juvenile and did so for the purpose of obtaining a confession that it otherwise would have been prevented from obtaining. Because [*26] we conclude that defendant's right to counsel pursuant to *N.J.S.A. 2A:4A-39* applies, we are not compelled to reach that argument. Nevertheless, we have carefully reviewed the transcript and find that the judge's suggestion to produce defendant in the morning was not an order that required the State to produce defendant before the judge at nine o'clock. Thus, if we were to find it necessary to reach that issue to resolve this matter, we would reject defendant's requested relief.

V.

We reverse the judgment of the Appellate Division and remand for proceedings consistent with this opinion.

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, and ALBIN join in JUSTICE WALLACE'S opinion. JUSTICE RIVERA-SOTO filed a separate dissenting opinion in which JUSTICE HOENS joins.

DISSENT BY: RIVERA-SOTO

DISSENT

JUSTICE RIVERA-SOTO, dissenting.

Because I would affirm the judgment in this case substantially for the reasons cogently and thoughtfully explained by Judge Lihotz in her opinion below, *State in the Interest of P.M.P.*, 404 *N.J. Super. 69*, 960 *A.2d 758*

(*App. Div. 2008*), I dissent. I add only the following.

The majority "conclude[s] that when the Prosecutor's Office initiates a juvenile complaint and obtains a judicially approved arrest [*27] warrant, a critical stage in the proceeding has been reached, implicating the juvenile's statutory right to counsel." *Ante* at (slip op. at 16-17). That conclusion is unsupportable in two respects that are both additional to and separate from the persuasive reasoning of the appellate panel.

First, the majority's conclusion relies heavily on the fact that, in this case, it was the Prosecutor's Office that filed the juvenile delinquency complaint and sought defendant's detention. It is for that idiosyncratic reason that the majority concludes that "a critical stage in the proceeding ha[d] been reached[.]" By extension, then, if one ever so slightly tweaks the facts so that the complaint is filed by a law enforcement agency other than a prosecutor's office, the ensuing detention of a juvenile, standing alone, would not -- in the majority's iteration -- trigger a critical stage in the proceedings. In those circumstances, according to the logic of the majority's reasoning, the automatic limitation on waiver of the right to counsel mandated by *State v. Sanchez*, 129 N.J. 261, 609 A.2d 400 (1992), would be inapplicable.

To impose so stringent a restriction on the fundamental right to waive counsel solely [*28] on the vagary of which law enforcement agency files the juvenile delinquency complaint is too arbitrary a distinction upon which to justify the majority's conclusion. The better, more realistic rule remains as the Appellate Division reasoned: that because "juvenile court proceedings are not 'criminal [prosecutions,] but are exercises of the State's *parens patriae* jurisdiction in the interests of the juvenile[.]" *P.M.P., supra*, 404 N.J. Super. at 77-78, 960 A.2d 758 (quoting *In re State in the Interest of Steenback*, 34 N.J. 89, 104, 167 A.2d 397 (1961)), and because "[t]he juvenile court is a civil one, within the Family Division" where "[t]he principal objective . . . is protective not punitive[.]" *Id.* at 78, 960 A.2d 758 (citations omitted), the wholesale importation of criminal law concepts into juvenile delinquency matters is unwarranted. In short, the majority's approach is nothing more than the mixing of one's legal apples and oranges.

There is another independent ground that renders this case a particularly poor vehicle for the sweeping holding the majority adopts. When the juvenile complaint was

filed ³ and defendant was detained thereunder, he was twenty years old. Therefore, he no longer was a minor: he already was [*29] an adult. *See N.J.S.A. 9:17B-3* (providing that, subject to limited exceptions inapplicable here, "every person 18 or more years of age shall in all other matters and for all other purposes be deemed to be an adult"). The sole reason law enforcement proceeded by way of a juvenile delinquency complaint is that the events for which defendant stood charged had occurred when he was still a minor. But, unlike a minor who commits an offense and is adjudicated a delinquent while still a minor, defendant already was an adult by the time his misdeeds caught up to him. ⁴ Ironically, had he committed his crimes only one or, at most, two years before he in fact was charged, he would have been charged as an adult and, because his uncounseled confession occurred before an indictment was returned, his waiver of the right to counsel would have been effective. It is only through a threadbare fiction that we treat this adult defendant as a juvenile, a fiction that is frayed even more by the awkward distinctions the majority today draws.

3 It is illuminating to reflect that the juvenile delinquency complaint charged defendant, when he was thirteen or fourteen years old, with raping a seven-year-old girl; [*30] specifically, he was charged with first-degree aggravated sexual assault by the use of physical force or coercion and severe personal injury is sustained by the victim, in violation of *N.J.S.A. 2C:14-2(a)(6)*, and third-degree endangering the welfare of a child by engaging in sexual intercourse with a victim under the age of sixteen, in violation of *N.J.S.A. 2C:24-4(a)*. Had those events occurred four or five years later, defendant would have been charged as an adult and he would have faced imprisonment on the rape charge "for a specific term of years which shall be fixed by the court and shall be between 10 years and 20 years[.]" *N.J.S.A. 2C:43-6(a)(1)*, and, on the endangering charge, "for a specific term of years which shall be fixed by the court and shall be between three years and five years[.]" *N.J.S.A. 2C:43-6(a)(3)*; the rape charge carried with it a presumption of incarceration. *See N.J.S.A. 2C:44-1(d)*.

4 Indeed, defendant was so much so an adult that he already was a party to a proceeding before the Family Part, in a Title 9 matter initiated by the Division of Youth and Family Services

concerning defendant's then one-year-old son; custody of the infant had been awarded to defendant, [*31] something that never could have occurred if defendant had still been a minor subject to juvenile justice jurisdiction. That matter was pending before the same Family Part judge who authorized the issuance of the summons on the juvenile delinquency complaint.

In sum, as the Appellate Division so aptly noted, the purposes of the juvenile justice system stand in stark contrast to those of the criminal justice system. Those fundamental differences make the importation of concepts unique to one into the other an ill-fitting enterprise. Also, tethering whether someone charged in a juvenile delinquency complaint may waive the presence of counsel before giving an otherwise perfectly admissible statement to the happenstance of which law enforcement agency filed the complaint is simply far too arbitrary for reasoned application and becomes a toothless tiger, a meaningless requirement that, in practice, is far too easily sidestepped.⁵ Finally, granting this adult defendant a newly found protection to which he otherwise would not be entitled solely because he committed his offenses while still a juvenile defies basic common sense. For each of those reasons, severally and jointly, I dissent.

5 Given [*32] the majority's ruling, no doubt the law of unintended consequences will apply with a vengeance. Law enforcement officers would be well advised to steer clear of the Prosecutor's Office in juvenile delinquency matters involving an adult, on pain of having the juvenile delinquency complaint legally transformed into the functional equivalent of an indictment. In doing so, the judicial system as a whole will forfeit the salutary supervisory role the prosecutor's office brings into the mix. Also, law enforcement will be required to complete their investigation and questioning before filing a complaint, potentially placing others at risk, a point poignantly brought home in this case, where defendant was employed as a janitor in a school and, hence, could be in close contact with children. In a different vein, law enforcement would be justified in deferring the filing of a juvenile delinquency complaint against an adult, until after the adult is in custody and given the opportunity to waive his right to counsel and make a statement. That alternative similarly bypasses a level of judicial supervision we otherwise should be encouraging.

JUSTICE HOENS joins in this opinion.