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August 16, 2021

Glenn A. Grant, J.A.D
Acting Administrative Director of the Courts
Comments on the Future of Court Operations
Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625 – 0037

Re: Megan's Law Hearings

Dear Judge Grant:

This letter is in response to the Supreme Court's request for comments on the proposal to continue certain proceedings in a primarily remote format following the COVID-19 pandemic. This submission pertains to the position of the Office of the Public Defender, Special Hearings Unit, with respect to post-conviction Megan's Law hearings.

Megan's Law proceedings primarily consist of two types of hearings: (1) tier hearings, at which a Megan's Law registrant's risk and commensurate scope of community notification are determined; and (2) motions to terminate a registrant's obligation to register pursuant to N.J.S.A. 2C:7-2(f). The Court's July 16, 2021 Notice to the Bar and Public does not specifically discuss Megan's Law proceedings.

Nevertheless, we respectfully request that Megan's Law hearings – which have primarily been conducted remotely during the pandemic, but which are returning in some counties to in-person hearings – be included in Category 2.b., which outlines proceedings that may only be conducted virtually with the consent of all parties. The basis for this request is that fundamental constitutional rights are at stake in Megan's Law proceedings. Indeed, the purpose of these hearings is to ensure that a registrant's constitutional rights to privacy and reputation are not violated by allowing the State to effectuate community notification that is excessive in relation to the registrant's risk of re-offense. *See, e.g., Doe v. Poritz*, 142 N.J. 1, 106-07 (1995) (explaining that tier hearings are designed to "ensure that deprivations of [an offender's interests in privacy and reputation] occur only when justified by the risk posed by the offender"). The Court held that "procedures in the form of a hearing are due, that they must, on application, be provided before

notification and that they are constitutionally required.” Id. at 100.

To be sure, our experience throughout the pandemic has been that many clients of the SHU prefer to appear remotely and will likely continue to have that preference in the future if given the opportunity. One reason for this preference is that virtual appearances lessen the strain that court appearances have on their employment, which is already difficult to obtain and retain due to the stigmatization of being classified as a sex offender. See, e.g., E.B. v. Verniero, 119 F.3d 1077 (3d. Cir. 1997) (stating that the effects of sex offender notification in New Jersey are “harsh,” resulting in lost “employment and employment opportunities”). Also, many Megan’s Law proceedings are uncontested and appropriate for resolution in a remote format.

Yet, for those registrants who do wish to have their cases adjudicated in person – for instance, cases that are highly contested by the parties or those involving testimony where credibility determinations must be made – they should be given the option to do so considering that their fundamental constitutional rights are at stake. The SHU therefore requests that Megan’s Law hearings be included in the list of proceedings under Category 2.b. of the Court’s Notice to the Bar and Public.

Thank you for your time and attention to this matter.

Respectfully submitted,

s/ Fletcher C. Duddy
Fletcher C. Duddy
Deputy Public Defender

C: Maria Pogue, Chief, Criminal Court Services (via email)