THE STATE OF NEW HAMPSHIRE
MANCHESTER FAMILY DIVISION

HILLSBOROUGH, SS MARCH, 2020

IN THE INTEREST OF, A MINOR
DOCKET #

MOTION TO DISMISS

Juvenile, through counsel, Julian Jefferson, respectfully requests that this Honorable Court dismiss the petitions against him as the Court lacks jurisdiction to hear the case given the State's failure to comply with the pleading requirements of RSA 169-B:6. Juvenile relies on his statutory rights in RSA 169-B and his state and federal constitutional rights to due process pursuant to Part I Article 15 of the New Hampshire Constitution and the Fifth Amendment of the United States Constitution. As grounds wherefore, counsel states:

1. Juvenile is charged with one count of riot. Juvenile is a 15 year-old 9th grader.
2. The State alleges that this incident occurred at Juvenile' s High School, during the regular school day. This petition was filed by a Detective of the Manchester Police Department.
3. In the petition, the State alleges that Juvenile participated in a fight at school involving 2 or more students, and that one of those students sustained an unspecified injury.
4. Absent serious threats to school safety,[1] a petition alleging any delinquent act that occurred in school during the school day cannot be heard by a court unless the

[1] RSA 169-B:2 defines "serious threats to school safety" as "acts involving weapons; acts involving the possession, sale, or distribution of controlled substances; acts that cause serious bodily injury to other students or school employees; threats to cause bodily injury to students or school employees, where there is

state shows that the juvenile: (a) has not responded to the school's attempt to resolve the issue, (b) that the juvenile's guardians have been unwilling or unable to help resolve the issue, and (c) that the juvenile continues to engage in delinquent behavior. See RSA 169-B:6(III). The juvenile code instructs the state that

> information **shall** be included in the petition which shows that the legally liable school district has sought to resolve the expressed problem through available educational approaches, including the school discipline process, if appropriate, that the school has sought to engage the parents or guardian in solving the problem but they have been unwilling or unable to do so, that the minor has not responded to such approaches and continues to engage in delinquent behavior, and that court intervention is needed.

See id. (emphasis added).

5. Here, the State has not established that: (1) Juvenile has not responded to the school's attempts to resolve any issues, (2) his guardians have been unable or unwilling to help, or (3) Juvenile has continued to engage in delinquent behavior.
6. Not only has the State failed to establish these propositions; the exact opposite is true. First, Juvenile was appropriately disciplined by the school for his involvement in a fight with another student. Juvenile received a 5-day school suspension. Second, the petition itself notes that Juvenile' parents were very receptive and cooperative with the school discipline process. Third, Juvenile has not been accused of engaging in any further delinquent behavior following this school fight. Importantly, Juvenile has never been arrested before in his life.

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a reasonable probability that such threats will be carried out; acts that constitute felonious sexual assault or aggravated felonious sexual assault under RSA 632-A; arson under RSA 634:1; robbery under RSA 636:1; and criminal mischief under RSA 634:2, II and RSA 634:2, II-a." Simple assault, mutual combat and riot are not included in this definition.

7. Instead of complying with the statutory mandates to justify a prosecution in this case, the State asserts that court intervention is needed because: 1) Juvenile got into a fight at school, 2) he was actively contributing to a "major issue" at the school, 3) the fight created a "large disturbance" in school, and 4) multiple police officers had to expend a significant amount of time to respond to this school fight.
8. It would create a dangerous precedent to allow this prosecution to procced on these vague and/or irrelevant assertions above. The State has elected to charge Juvenile with the felony level charge of Riot. The State then seizes upon this charge to say court intervention is needed due to the "violent nature of this crime". In reality, this was a school fight that is more appropriately characterized in criminal terms as mutual combat, or simple assault. In any event, as noted in footnote 1 above, the legislature listed the specific crimes that constitute a serious threat to school safety; riot, simple assault, and mutual combat are not among them. Also, the amount of time police spend on any one investigation, or call for service, has no bearing, whatsoever, on the issue of whether is it legal to refer a school matter for prosecution in juvenile court.
9. In 2013, the New Hampshire legislature modified the juvenile statute by adding the statutory provision above. Senator Sam Cataldo, speaking on behalf of the Judiciary Committee issued the following statement when that committee unanimously approved the legislation: As the number of school resource officers have increased, school violence is down, but referrals of juveniles to court has increased. **This requires school solutions to normal behavior issues rather**

than referral to the courts when appropriate. (emphasis added). Getting into a fight at school is certainly a normal behavioral issue that an Assistant Principal is more than capable of addressing without police action.

10. It is no accident that the legislature chose the word "shall" in drafting RSA 169-B:6(III) as a mandatory requirement with which the State must comply. See In re Russell C., 120 N.H. 260, 264 (1980) ("The use of the word 'shall' is generally regarded as a command; although not controlling, it is significant as indicating the intent that the statute is mandatory). The provisions of RSA 169-B:6 were added to prevent the State from filing petitions for these types of charges – minor misdemeanors where the school disciplinary process is capable of resolving the issue. Requiring schools to handle incidents that do not present a serious threat to school safety is consistent with the purposes of the juvenile code, which requires the least restrictive, most appropriate disposition. See RSA 169-B:19.

11. In November of 2016, the Atlantic published an article titled "How America Outlawed Adolescence". The following information from this article is useful for this Court to consider. Texas, until recently, had one of the worst records in the country on juvenile justice. That changed five years ago when a juvenile judge invited the newly appointed Chief Justice of the Texas Supreme Court to observe juvenile court for one day. The Chief Justice, "watched in silence as parents and children, most without lawyers, stutter-stumbled through formal legal rituals many of them did not seem to understand. He (the Chief Justice) was startled not just by the power imbalance but by the fact that he hadn't known about it before.

The Chief Justice went on to remark, "If it were my kid, I would be in the courtroom filing motions to dismiss".

12. The Chief Justice then worked with members of the Texas legislature to reform the juvenile code. One of those reforms included a requirement that some schools were required to try common-sense interventions before resorting to filing criminal charges against a child. The legislation went into effect in September of 2013. The results were significant, not only did referrals for minor offenses committed in school drop significantly, so too did the number of expulsions and other serious disciplinary actions by the school system.

13. Jason Nance, a law professor, who also has an M.A. in Education Administration, conducted a study and published an article titled: Students, police, and the school-to-prison pipeline" (Washington University Law Review, Volume 93, Issue 4) (2016). Professor Nance's finding are both troubling and informative. In addition to conducting his own study, Professor Nance reviewed several studies, statistics, and government records.

14. The article starts with the common sense premise that "traditionally, only educators, not law enforcement, handled certain lower-level offenses that students committed, such as fighting or making threats without a deadly weapon". Empirical studies have found that arresting a student will substantially reduce the odds that the student will graduate from high school, especially if that student appears in court. Student were once sent to the principal's office for discipline and assessment; several scholars have referred to this troubling shift as the "criminalization of school discipline".

15. In the late 1970's there were fewer than 100 police officers in our public schools. In 2007, that number was 19,088. A natural consequence of that is, police are becoming involved in student disciplinary matters that traditionally have been handled by educators. Teachers and other school officials have advanced academic credentials, receive training in child psychology, discipline, pedagogy, and educational theory. Importantly, teacher and school administrators are also directly accountable the local school board. It cannot be said the police officers receive this same level of advanced education specifically geared toward how to educate and discipline children in a school setting. There is a key finding from the new study that Professor Nance conducted: referrals for criminal prosecution for school fights are more than double when a school has an assigned police officer (SRO).

16. Gary Sweeten, is an assistant college professor, who has a PhD in criminology and criminal justice; he has also extensively studied the data, studies, and other literature showing the connection between arrests at high school and the effects on the child arrested. Professor Sweeten published his findings in an journal article titled: Who will graduate? Disruption of high school education by arrest and court involvement. (Justice Quarterly, Volume 23, Number 4) (2006). The findings are troubling and informative. First, the effect of a court appearance is particularly detrimental to less delinquent youth. Second, a court appearance (even without a conviction), increases the odds of high school dropout by a factor of at least 3. Professor Sweeten found that children took on the label of "delinquent" and the

stigma attached to being hauled into Court induces a deviant self-concept in children.

17. All of the facts, arguments, and data above should compel this Court to conclude that it is quite literally detrimental to the overall health and wellbeing of Juvenile to allow this prosecution to continue. As mentioned above, Juvenile is a 15 year-old child who has had no prior involvement with the criminal justice system (and none since).

18. Undersigned counsel has done a home visit to Juvenile' house, in addition to meeting with Juvenile and his father in my office. Counsel can state to the Court that Juvenile resides in a safe, and loving 2-parent household. Counsels findings are consistent with those mentioned in the petition noting Juvenile father to be engaged, receptive, and cooperative. Left alone, there is no reason not to think the Juvenile will continue to be a productive student and young man in the community.

19. In conclusion, the State has failed to show the Court that this prosecution is a necessary intervention. The clear language of 169-B:6 requires this Court to dismiss this petition. All of the science, data, and literature above show the importance of not bringing children into the juvenile criminal justice system unless we absolutely have to.

20. In In re Russell C., the New Hampshire Supreme Court held that the mandatory language requiring that certain time limits be complied with was jurisdictional. 120 N.H. at 268. Because the State has not met the pleading requirements of RSA 169-B:6, these petitions must be dismissed.

WHEREFORE, Juvenile respectfully requests this Honorable Court:

A. Dismiss the petition against him;

B. If not inclined to grant this motion on pleadings alone, schedule a hearing and make written findings of fact and rulings of law sufficient for appellate review; and

C. Order such other and further relief as the Court deems just and equitable.

DATED: March 16, 2020

Respectfully submitted,

Julian Jefferson, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been forwarded this 16th day of March, 2020, to Juvenile Prosecutor.

Julian Jefferson, Esq.

THE STATE OF NEW HAMPSHIRE
MANCHESTER FAMILY DIVISION

HILLSBOROUGH, SS MARCH, 2020

IN THE INTEREST OF A MINOR
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RESPONSE TO STATE'S OBJECTION TO DISMISS

Juvenile, through counsel, Julian Jefferson, respectfully requests that this Honorable Court dismiss the petition against him as the Court lacks jurisdiction to hear the case given the State's failure to comply with the pleading requirements of RSA 169-B:6. Juvenile relies on his statutory rights in RSA 169-B and his state and federal constitutional rights to due process pursuant to Part I Article 15 of the New Hampshire Constitution and the Fifth Amendment of the United States Constitution. As grounds wherefore, counsel states:

1. Juvenile is charged with one count of riot. Juvenile is a 15 year-old 9th grader.
2. The State alleges that this incident occurred at Juvenile's high school in Manchester, during the regular school day. This petition was filed by a detective of the Manchester Police Department.
3. In the petition, the State alleges that Juvenile participated in a fight at school involving 2 or more students, and that one of those students sustained an unspecified injury.
4. The State responded by objecting to the motion to dismiss on several grounds which do not support this case continuing.

5. The first ground for denying the motion to dismiss is that the crime involves a serious threat to school safety because one student sustained a broken nose. The first flaw with this argument is that this specific injury is not alleged in the petition. The second, and fatal flaw, to this argument is that Juvenile did not cause that injury. As the State accurately notes in its motion, Juvenile engaged in a fight with another student. While Juvenile and the other student are fighting 4 other students begin fighting as well. The State is asking this Court to hold a 15-year old child accountable for the actions of another child in order to get around the clear mandate of the legislature as expressed in 169-B:6.
6. In addition, the State's position runs contrary to the overall purpose of the juvenile statute. Specifically, the legislature pronounced that the provisions of the juvenile stature are to be liberally interpreted, construed and administered to provide...**resources which such minor needs**. (emphasis added) N.H. RSA 169-B:1. The law is clear that the provisions of the statute apply specifically to the actions and needs of this child; not to use the actions of another child as an end-run around the mandate of 169-B:6.
7. The second ground asserted by the State is that the State (through a Detective) addressed all the questions required by the statute and ultimately determined that Court intervention was needed. The State is missing the whole point of the statute. The test is not whether the State has determined the court intervention is needed. The test is: has the State provided sufficient information to satisfy this Court that court intervention is required. That test is based upon the statutory criteria laid out

in 169-B:6 mandating that, unless they are met, school incidents shall be addressed at school and not in court.

8. Here, the State has not established that: (1) Juvenile has not responded to the school's attempts to resolve any issues, (2) his guardians have been unable or unwilling to help, or (3) Juvenile has continued to engage in delinquent behavior.
9. The State goes on to say that characterizing Juvenile's actions in this incident as mutual combat would be to mischaracterize the true nature of this incident. Strangely, the State then goes onto to describe Juvenile's behavior as the very definition of mutual combat. Namely, Juvenile and another student punched each other. Here, the State again tries to conflate the actions of other children in order to get around these facts. As stated above, a juvenile proceeding is unique to the individual child.
10. The State asserts that Juvenile' actions are not "normal school behavior". Here again the State make general assertions about the students continuing to fight when police tried to break up the fight. The focus here needs to be on Juvenile's behavior; he is not being charged with resisting arrest, simple assault on a police officer, or any other behavior that would suggest his behavior was not "normal" or was to such a degree that court intervention is needed.
11. Further, as stated in my previous motion, Juvenile has never been arrested before. Further, he has not been arrested since. Importantly, he has faced no further disciplinary action since he returned to school. In short, there is nothing to suggest that engaging in this fight was not "normal" behavior for this child.

12. The State provided some context to this Court. Defense counsel would also provide context to this fight as well. Juvenile is an African-American child. The other boy he got into this fight with is Caucasian. This fight was instigated by this other boy calling Juvenile a "nigger". Further, it was the other child who started with fighting words. Under these circumstances, it is completely "normal" for a teenager to respond emotionally and get into a fight.

13. Instead of confronting the plain fact that the State cannot meet its burden under the clear statutory mandates to justify a prosecution in this case, the State reiterates that court intervention is needed because: 1) Juvenile got into a fight at school, 2) he was actively contributing to a "major issue" at the school, 3) the fight created a "large disturbance" in school, and 4) multiple police officers had to expend a significant amount of time to respond to this school fight.

14. The assertions above are irrelevant under the statutory criteria the State must meet. In addition, the State has failed to rebut the uncontested (and relevant) facts. First, Juvenile was appropriately disciplined by the school for his involvement in a fight with another student. Juvenile received a 5-day school suspension. Second, the petition itself notes that Juvenile' parents were very receptive and cooperative with the school discipline process. Third, Juvenile has not been accused of engaging in any further delinquent behavior following this school fight. Fourth, Juvenile has never been arrested before in his life.

15. The last ground asserted by the State is that a dismissal of the petition is not a remedy, even if the Court finds that the State has not met its burden under 169-B:6 to bring the petition.

16. The States cites In re Russell C to support this position; but does not deal with its central holding. The Court found that, in the context of a speedy trial right, it is no accident that the legislature chose the word "shall" in drafting RSA 169-B:6(III) as a mandatory requirement with which the State must comply. 120 N.H. 260, 264 (1980) ("The use of the word 'shall' is generally regarded as a command; although not controlling, it is significant as indicating the intent that the statute is mandatory). The Court disagreed with the State and reversed the lower court's decision. The word "shall" is likewise included in the new pleading requirement for incidents that take place at school.

17. In addition, the reliance upon the language that the sole "purpose of filing of a petition is to give the juvenile and his parents adequate notice of the substance of the proceedings" is misplaced. Id. at 262. This reliance is fatal because the statute has subsequently been amended since that ruling was handed down 30 years ago. The provisions of RSA 169-B:6 were added to prevent the State from filing a petition like this. The amendment created an independent purpose of the petition, namely to give the juvenile (and the Court) an opportunity to challenge the propriety of referring this matter to the juvenile justice system at all.

18. The State's interpretation would lead to the "absurd, unjust, or illogical" result that case law prohibits. In addition, it would be completely contrary to the clear direction of statutory framework of the juvenile code. Specifically, this Court has a **duty** to liberally interpret, construe, and administer the statute to "**provide effective judicial procedures** through which **the provision of this chapter are...enforced**...and which recognize and **enforce** the constitutional and **other**

rights of the parties". N.H. RSA 169-B:1(IV) (emphasis added). Contrary to the State's assertion, the legislature, through the plain and ordinary words of the statute gave this Court, nor only a directive, but a duty, to enforce Juvenile' statutory right to have this case dismissed.

19. It is worth repeating the empirical evidence that has led to so many jurisdictions, including New Hampshire, to reform the juvenile justice system in relation to school matters. First, the effect of a court appearance is particularly detrimental to less delinquent youth. Second, a court appearance (even without a conviction), increases the odds of high school dropout by a factor of at least 3.
20. In conclusion, the State in its objection, has failed to establish the State has met its burden to file this petition.

WHEREFORE, Juvenile respectfully requests this Honorable Court:

A. Dismiss the petition against him;

B. If not inclined to grant this motion on pleadings alone, schedule a hearing and make written findings of fact and rulings of law sufficient for appellate review; and

C. Order such other and further relief as the Court deems just and equitable.

DATED: March 31, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been forwarded this 31st day of March, 2020, to Juvenile Prosecutor.

Julian Jefferson, Esq.