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VIA E-MAIL & FIRST CLASS MAIL

The Workgroup on Harassment, Assault &
Misogyny in New Jersey Politics
c/o Ms. Patricia Teffenhart
Executive Director
NEW JERSEY COALITION AGAINST SEXUAL ASSAULT
Crossroads Corporate Center
3150 Brunswick Pike, Suite 160
Lawrenceville, New Jersey 08648-2420

Re: Recommendations for Reforms to Improve Redress for Victims of Harassment, Sexual Assault and Sexual Misconduct in New Jersey

Dear Senator Weinberg and Committee Members:

I am writing today to share with you my client, Katie Brennan's, recommendations for potential reforms in New Jersey to improve redress for victims of harassment, sexual assault and sexual misconduct in New Jersey. Ms. Brennan and I welcome the opportunity to address the Workgroup at its next hearing in March

Ms. Brennan respectfully requests that The Workgroup on Harassment, Assault Misogyny in New Jersey Politics consider the following reforms to improve the criminal justice process for victims of sexual assault:

I. Prosecutorial Reform

(1) Implementation of aspects of the AEquitas Model Response to Sexual Violence for Prosecutors (RSVP) in New Jersey -- appropriate legislative action to amend, at a minimum, N.J.S.A. 52:4B-55 (Sexual Assault Nurse Examiner Program Coordinating Council) and/or N.J.S.A 52:4B-44 (Standards to ensure rights of crime victims) to require all New Jersey county prosecutors to be trained on and implement the AEquitas Model Response to Sexual Violence for Prosecutors (RSVP) ("Aequitas RSVP") in handling sexual violence cases, including but not limited to charging standards, investigation practices, and jury education. See,

<https://aequitasresource.org/wp-content/uploads/2018/09/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf> (a copy of which is attached hereto as **Exhibit A**).

(2) Implementation of biennial training for prosecutors -- appropriate legislative action to amend N.J.S.A. 52:4B-55 (Sexual Assault Nurse Examiner Program Coordinating Council) to require county prosecutors to receive biennial training from nationally recognized expert trainers of trauma informed care. Training should include smaller groups designed to foster practical implementation and plans to incorporate training into their respective counties. Training for new prosecutors should occur within sixty (60) days of the commencement of employment. *See, e.g.*, AEquitas RSVP recommended training at Endnotes 3 and 190.

(3) Requirements regarding communications to victims when prosecutors decline to prosecute -- appropriate legislative action to amend N.J.S.A 52:4B-44 (Standards to ensure rights of crime victims) and/or N.J.S.A. 2C:14-2.1 (Right of victim to consult with prosecuting attorney), and action to amend the New Jersey Attorney General Standards for Providing Services to Victims of Sexual Assault, 3rd Edition, November 2018 at pp. 26-27. **to require** prosecutors to provide written communication to sexual assault victims when declining to prosecute, in addition to meeting with the victim, and requiring that such communications occur prior to any public announcement about the decision.

(4) Requirements for plea deals -- appropriate legislative action to amend N.J.S.A 52:4B-44 (Standards to ensure rights of crime victims) to require that any complaint of a sexual nature be downgraded in plea deals only without the signed consent of the victim/survivor. *See, e.g.*, AEquitas RSVP recommendations, "Where Plea Offers are Appropriate, Ensure Agreement Reflects the Seriousness of the Assault," at Section 4.2E (p. 93).

II. Law Enforcement Reform

(1) Requirements regarding filing of police reports in cases of sexual assault -- appropriate legislative action to amend N.J.S.A 52:4B-44 (Standards to ensure rights of crime victims) to require law enforcement to review the police report of the sexual assault with the survivor prior to filing the report.

(2) Requirements regarding providing information to sexual assault victims-- appropriate legislative action to amend N.J.S.A 52:4B-44 (Standards to ensure rights of crime victims) and/or N.J.S.A. 52:4B-55 (Sexual Assault Nurse Examiner Program Coordinating Council) to require that when a victim reports an incident to law enforcement, they should be provided with a packet of resources and the law enforcement official it was reported to, and the victim and the law enforcement official, should both sign off that law enforcement official provided the packet of resources to the victim. This packet should include information about all of the victim/survivor's legal rights, information on a victim advocate, and options and a number they can call at any time for an update in their investigation.

(3) **Implementation of biennial training for law enforcement -- appropriate legislative action to amend N.J.S.A. 52:4B-55 (Sexual Assault Nurse Examiner Program Coordinating Council) to require** law enforcement to receive biennial training from nationally recognized expert trainers of trauma informed care. Training should include smaller groups designed to foster practical implementation and plans to incorporate training into their force. See, e.g., AEquitas RSVP recommended training at Endnotes 3 and 190.

(4) **Implementation of the Michigan Model Policy: Law Enforcement Response to Sexual Assault -- appropriate legislative action to amend N.J.S.A. 52:4B-55 (Sexual Assault Nurse Examiner Program Coordinating Council) to require** law enforcement to follow the guidance for dispatch/call taker response, immediate law enforcement response, report writing, sexual assault evidence kit and forensic examination, investigative phase, including the investigative phase with survivor interaction, witness interviews, suspect investigation and interaction, and crime scene and evidence collection as outlined in the “Michigan Model Policy: Law Enforcement Response to Sexual Assault.” See https://www.michigan.gov/documents/mdhhs/Michigan_Model_Policy_550586_7.pdf (a copy of which is attached hereto as **Exhibit B**).

III. **Sexual Assault Reporting Reform**

(1) **Creation of a statewide reporting portal for reporting inappropriate comments-- appropriate legislative action to amend N.J.S.A 52:4B-44 (Standards to ensure rights of crime victims) and/or N.J.S.A. 52:4B-55 (Sexual Assault Nurse Examiner Program Coordinating Council) to require to require** the creation of a statewide portal through which victims/survivors of sexual assault can report instances of inappropriate comments/conduct by judges, prosecutors, law enforcement, advocacy, forensic nurse examiners, etc.

(2) **Creation of a statewide portal for reporting instances of sexual violence --appropriate legislative action to amend N.J.S.A 52:4B-44 (Standards to ensure rights of crime victims) and/or N.J.S.A. 52:4B-55 (Sexual Assault Nurse Examiner Program Coordinating Council) to require** the creation of a statewide confidential portal through which victims/survivors of sexual assault can report instances of sexual violence (harassment through assault) committed by individuals with power/influence (elected officials, police officers, medical professionals, etc.).¹

¹ For both Points IV (1) and (2) the creation of the portals must include clearly articulated next steps once someone files such a report including time frame for response, the communication of resources available, and legal rights.

(3) Requirements for recusal -- appropriate legislative action to amend **N.J.S.A. 52:4B-44 (Standards to ensure rights of crime victims) and/or N.J.S.A. 52:4B-55 (Sexual Assault Nurse Examiner Program Coordinating Council) to require** family members of any individual accused of sexual assault to immediately recuse themselves from any review of accusations (both in workplace and in judicial system).

(4) Requirement for annual audits -- appropriate legislative action to amend **N.J.S.A. 52:4B-44 (Standards to ensure rights of crime victims) and/or N.J.S.A. 52:4B-55 (Sexual Assault Nurse Examiner Program Coordinating Council) to require** annual audits to occur in order to publicly release the percentage and nature of sexual assault cases that proceed. See, e.g., AEquitas RSVP at Ch. 5.

IV. Judicial and Court Reform

Ms. Brennan proposes the State convene a task force to explore the implementation of proposed reforms focused on improving the rights of victims/survivors of sexual violence within the Judiciary and in the Courts. Specifically, such a task force could explore the following reforms:

(1) Implementation of biennial training for judges -- As with prosecutors, as set forth in Section I (2) above, judges shall receive biennial training from nationally recognized expert trainers of trauma informed care. Training must include smaller groups designed to foster practical implementation and plans to incorporate training into their respective counties. Training for new judges should occur within sixty (60) days of the commencement of employment. See, e.g., AEquitas RSVP recommended training at Endnotes 3 and 190.

(2) Implementation of a “Court Watch” – Implement a “Court Watch” to improve judicial procedural reforms in sexual assault cases such as those advanced by Seattle King’s County Court. See, <https://www.kcsarc.org/courtwatch>.

(3) Implementation of a Sex Offender Court – Implement a Sex Offender Court as recommended by the Center for Court Innovation following the Sex Offense Court Model proposed in New York. A key reform would include, in acquaintance sexual assault cases with a “consent” defense, the purpose of the investigation shall not to be to determine than an act occurred because both parties agree that an incident took place. Rather, the case should move straight to a grand jury for a credibility determination. See , https://www.courtinnovation.org/sites/default/files/Sex_Offense_Courts.pdf.

(4) Implementation of a Restorative Justice Program- Implement a large-scale, community-based, sexual-violence focused restorative justice program to give victims the chance to be heard and feel that justice has been served. See NJCASA’s proposal to the Attorney General and <https://impactjustice.org/impact/restorative-justice-ipv-sexual-harm/>.

V. Political Campaign Reform for Responding to Sexual Assault, Sexual Harassment, Discrimination and Retaliation

Recently, Senator Vin Gopal announced that would join a bipartisan team of state legislators to introduce novel legislation that would implement much-needed oversight over the handling of claims of harassment and discrimination in New Jersey campaigns and political parties. Ms. Brennan proposes that such a bipartisan team consider as part of this legislation implementing the following provisions:

(1) **Requirements for written policies** -- appropriate legislative action to require all political campaigns must have written sexual harassment, sexual assault, anti-discrimination and anti-retaliation provisions.

(2) **Requirements for training** -- appropriate legislative action all political campaign staff (paid and unpaid) must take training (anti sexual harassment, anti-sexual assault, anti-discrimination, and anti-retaliation). Campaigns should hold trainings monthly so that new volunteers and staff (paid and unpaid) may attend.

(3) **Requirements for reporting** -- appropriate legislative action all political campaigns must have methods/mechanisms to report harassment. Campaigns with paid staff must designate an individual or individuals to whom staff (paid and unpaid) can report harassment, assault, discrimination and retaliation. For smaller campaigns with no paid staff, the State shall create an ombudsman/hotline for reporting same.

Ms. Brennan has endeavored to to identify implementable “best practice” standards for (1) providing services to survivors/victims of sexual assault in New Jersey; (2) reforming political campaigns to better respond to complaints of sexual assault, sexual harassment, discrimination and retaliation and (3) improving the conduct of workplace investigations pursuant to the State of New Jersey Workplace Anti-Harassment/Discrimination Policy.

Ms. Brennan has conducted substantial research to ground these proposals in best practices models from around the country that focus specifically on the rights and legal advocacy issues impacting victims/survivors of sexual violence.

VII. New Jersey Workplace Anti-Harassment/Discrimination Policy (“State Policy”)

With regard to the State of New Jersey Workplace Anti-Harassment/Discrimination Policy (“State Policy”), Ms. Brennan proposes the following reforms:

(1) **Revision to N.J.A.C. 4A:7-3.1(j)** --Eliminate the currently pending proposed, revised language (a copy of which is attached hereto as **Exhibit C**), and replace it with “All persons interviewed, including complainants and witnesses, shall be asked to use discretion in

communicating any aspect of the investigation so as to avoid interfering with the investigation. Nothing in this request should be interpreted as any restriction upon any state employee's rights under state or federal law, including their right of free speech and/or right to communicate any allegations to another person[.]”

(2) Support Person and/or Advisor -- Allow complainants and respondents of harassment allegations be accompanied with a support person or advisor of their choice to any meeting or interview that is conducted under the State Policy. An advisor or support person, may not, however, stand in place of the complainant or the respondent, or otherwise interfere in the investigation process.

(3) Change the requirement that EEO/AA investigations be completed and the final letter of determination issued from the current regulation of “within 120 days” and “up to 60 additional days in cases involving exceptional circumstances” to “as soon as possible.”

(4) Require any state employee found personally liable in a final judgment or an adjudicated award for intentional violations of the State Policy to reimburse the State for that individual's proportionate share of the total monetary award paid by the State to any other person.

(5) Require that if the person found to have violated the State Policy is not employed by the State, other appropriate action shall be taken, including notice to the actual subsequent employer in a manner similar to the provisions of the State of Hawaii Discrimination/Harassment-free Workplace Policy No. 601.00.

(6) Eliminate the “At the EEO/AA Officer's discretion” of N.J.A.C 4A:7-3.2(i) and change to provision to confirm that the State will investigate “all reasonable and good faith complaints that implicate the Policy.”

(7) Adopt a comprehensive conflict of interest policy that, at minimum, describes policies and procedures in which an investigator and/or other individual who participates in any EEO/AA investigation must recuse themselves because of a conflict of interest.

(8) Require the State to notify any State employees who have executed confidentiality forms (a copy of which is attached hereto as **Exhibit D**) in connection with N.J.A.C. 4A:7-3.1(j) that they are null and void by so informing by means publicly posted notification and prohibit the State from using the forms going forward as a violation of N.J.S.A. 10:5-12.8, the First Amendment and New Jersey public policy.

Very truly yours,

SMITH EIBELER, LLC

/s/ Kathryn K. McClure

KATHRYN K. McCLURE

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