

PROPOSED REPORTER'S NOTES TO RULE 15(a)(3) AMENDMENTS

Rule 15(a)(3) Right of Appeal Where Delinquency Defendant Discharged. Amended Rule 15(a)(3) permits the Commonwealth to appeal a judge's decision under G.L. c. 119, § 72A to discharge from criminal prosecution a juvenile defendant who, by virtue of his or her age, is no longer subject to Juvenile Court jurisdiction. Section 72A provides that a person nineteen or older who is apprehended for committing a criminal offense while a juvenile cannot be prosecuted for that offense in Juvenile Court. G.L. c. 119, § 72A. See *Commonwealth v. Nanny*, 462 Mass. 798, 799 (2012). Although the Juvenile Court retains initial jurisdiction in such a case, Section 72A requires the court to conduct a two-stage hearing at which the judge determines, first, if there is probable cause to support the delinquency complaint. If the judge finds probable cause, the judge must then decide whether, as a matter of discretion and consistent with public safety, to discharge the defendant from further prosecution, or, instead, to dismiss the delinquency complaint and cause a criminal complaint to issue, transferring the case for prosecution in District or Superior Court. See G.L. c. 119, § 72A; *Nanny*, 462 Mass. at 799 (describing statutory framework).

Rule 15(a)(3) fills a prior gap in the appellate review of such Section 72A decisions. If the judge finds no probable cause, the complaint is dismissed, and the Commonwealth may appeal that dismissal and its underlying probable-cause determination. See Rule 15(a)(3); *Commonwealth v. Ilya I.*, 470 Mass. 625 (2015) (entertaining a Commonwealth appeal of a delinquency-complaint dismissal for want of probable cause). If the judge finds probable cause and declines to discharge the defendant, the defendant may appeal that refusal to discharge as part of his or her general appeal if convicted. See *Fitzpatrick v. Commonwealth*, 453 Mass. 1014, 1015 (2009) (rescript opinion). However, if the judge finds probable cause but discharges the defendant, prior to this amendment the rules did not explicitly provide that the Commonwealth may appeal that decision even though it effectively terminates the prosecution. Amended Rule 15(a)(3) cures that deficiency.

Rule 15(b)(1) Time for Filing Appeal. Rule 15(b)(1) provides that a Commonwealth appeal of a Section 72A discharge must be filed within thirty days of the discharge order, the same filing period applicable to other appeals under Rule 15.