

10257

I N A S S E M B L Y

May 16, 2012

Introduced by M. of A. LENTOL -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, the executive law, the judiciary law and the penal law, in relation to the age of criminal responsibility

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature finds and declares
2 that, each year, approximately 50,000 youths aged 16 and 17 are arrested
3 in New York and prosecuted as adults in its criminal courts, overwhelm-
4 ingly for non-felony offenses. As many studies over the past decade have
5 shown, however, the adult criminal justice system does not effectively
6 respond to teenage criminal behavior. It is costly and largely ill-suit-
7 ed to the challenges such crime presents. Accordingly, this measure aims
8 to provide a distinctly new, more effective response to teenage criminal
9 behavior.
10 Modern behavioral neuroscience confirms that the brains of teenagers
11 are not yet matured; they lack impulse control and can neither make
12 fully-reasoned judgments nor weigh the risks and consequences of their
13 behavior. It is now understood that teenage offenders should be treated
14 differently from older criminals because their offenses are not as
15 "morally reprehensible as that of an adult." Moreover, as other states
16 nationwide have learned, and as the legislature now recognizes, teenag-
17 ers are better candidates for rehabilitation and more likely to benefit
18 from alternatives-to-incarceration programs and locally-based services.
19 Experience in other states has shown that recidivism among teenage
20 offenders drops markedly when the latter are treated with appropriate
21 intervention programs and services designed for teenagers rather than
22 with adult criminal sanctions. Indeed, where such programs and services
23 are utilized, all involved can benefit: the affected teenagers, many of
24 whom can thereby be steered away from a life of crime, and the public,
25 which, where these programs and services succeed, can be spared the
26 consequences and costs of such a life upon the community.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 This is not to say that 16- and 17-year-old offenders who commit seri-
2 ous offenses should not be held responsible for their actions. While
3 they may not be adults with fully mature minds, they should not be
4 entirely relieved of the potentially serious consequences of their
5 behavior. Echoing this view, the United States Supreme Court has held
6 that, even while young offenders ought not be held to adult criminal
7 justice penalties, they are not to be altogether absolved of responsi-
8 bility for their actions.

9 After considering the options available, the legislature finds and
10 declares that, at the present time and given present resources, the most
11 effective way of balancing the limits and needs of non-violent 16- and
12 17-year-old offenders with community needs and relevant penological
13 considerations is to decriminalize their offenses and to establish a
14 specialized forum within the state's superior courts in which those
15 offenses may be addressed, a forum that blends features of criminal
16 court and family court in a youth division of adult criminal court
17 presided over by judges specially trained in adolescent development,
18 child psychology and therapeutic approaches to child pathology and juve-
19 nile crime. In such fashion, young offenders can be afforded benefits
20 ideally suited to their youth and developmental status, benefits that
21 are an integral aspect of juvenile delinquency proceedings to which
22 younger offenders are subject in family court. These benefits include
23 ensuring that 16- and 17-year-old offenders will not be stigmatized with
24 criminal convictions and helping them confront the problems giving rise
25 to their offenses with programmatic intervention outside the traditional
26 criminal justice environment. This measure would establish the youth
27 division of superior court and prescribe the special procedures neces-
28 sary to its operation.

29 S 2. Subdivision 1 of section 1.10 of the criminal procedure law is
30 amended to read as follows:

31 1. The provisions of this chapter apply exclusively to:

32 (a) All criminal actions and proceedings commenced upon or after the
33 effective date thereof and all appeals and other post-judgment
34 proceedings relating or attaching thereto; [and]

35 (b) All matters of criminal procedure prescribed in this chapter
36 which do not constitute a part of any particular action or case, occur-
37 ring upon or after such effective date; AND

38 (C) ALL ACTIONS AND PROCEEDINGS COMMENCED PURSUANT TO THIS CHAPTER
39 AGAINST PERSONS SIXTEEN OR SEVENTEEN YEARS OF AGE WHO ARE NOT CRIMINALLY
40 RESPONSIBLE FOR THE OFFENSES CHARGED IN SUCH ACTIONS AND PROCEEDINGS.

41 S 3. Section 1.20 of the criminal procedure law is amended by adding a
42 new subdivision 44 to read as follows:

43 44. "YOUTH DIVISION OFFENSE" MEANS A FELONY OR MISDEMEANOR, OTHER THAN
44 A VIOLENT FELONY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02
45 OF THE PENAL LAW OR ANY OFFENSE LISTED IN PARAGRAPH TWO OF SUBDIVISION
46 EIGHTEEN OF SECTION 10.00 OF SUCH LAW, WHERE SUCH PERSON WAS AT LEAST
47 SIXTEEN YEARS OLD AND LESS THAN EIGHTEEN YEARS OLD AT THE TIME OF THE
48 ALLEGED OFFENSE.

49 S 4. Subdivision 2 of section 30.20 of the criminal procedure law, as
50 amended by chapter 184 of the laws of 1972, is amended to read as
51 follows:

52 2. Insofar as is practicable, the trial of a criminal action must be
53 given preference over civil cases; and the trial of a criminal action
54 where the defendant has been committed to [the] custody [of the sheriff]
55 during the pendency of the criminal action must be given preference over
56 other criminal actions.

1 S 5. The criminal procedure law is amended by adding a new article 155
2 to read as follows:

3 ARTICLE 155

4 ARREST OF PERSONS AGED SIXTEEN OR SEVENTEEN AT
5 THE TIME THE OFFENSE IS COMMITTED

6 SECTION 155.00 APPLICABILITY.

7 155.10 PROCEDURES UPON ARREST.

8 155.20 SPECIAL APPEARANCE TICKET.

9 S 155.00 APPLICABILITY.

10 THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO THE ARREST BY AN OFFICER
11 OF A PERSON FOR A YOUTH DIVISION OFFENSE. FOR PURPOSES OF THIS ARTICLE,
12 THE WORD "OFFICER" MEANS A POLICE OFFICER OR PEACE OFFICER.

13 S 155.10 PROCEDURES UPON ARREST.

14 1. UPON THE ARREST OF A PERSON FOR A YOUTH DIVISION OFFENSE, THE
15 ARRESTING OFFICER MUST IMMEDIATELY NOTIFY THE PARENT OR OTHER PERSON
16 LEGALLY RESPONSIBLE FOR THE ARRESTED PERSON'S CARE OR, IF SUCH LEGALLY
17 RESPONSIBLE PERSON IS UNAVAILABLE, THE PERSON WITH WHOM THE ARRESTED
18 PERSON RESIDES, OF THE ARREST. AFTER MAKING A REASONABLE EFFORT TO
19 PROVIDE SUCH NOTIFICATION, THE OFFICER MUST:

20 (A) RELEASE THE ARRESTED PERSON TO THE CUSTODY OF HIS OR HER PARENT OR
21 OTHER PERSON LEGALLY RESPONSIBLE FOR HIS OR HER CARE UPON THE ISSUANCE
22 OF A SPECIAL APPEARANCE TICKET IN ACCORDANCE WITH SECTION 155.20 TO THE
23 ARRESTED PERSON WITH A COPY THEREOF TO THE PERSON TO WHOSE CUSTODY HE OR
24 SHE IS RELEASED; OR

25 (B) WHERE EFFORTS TO REACH A PARENT OR OTHER PERSON LEGALLY RESPONSI-
26 BLE FOR THE ARRESTED PERSON'S CARE HAVE BEEN UNSUCCESSFUL, RELEASE THE
27 ARRESTED PERSON UPON THE ISSUANCE OF A SPECIAL APPEARANCE TICKET, IN
28 WHICH EVENT THE OFFICER SHALL MAIL A COPY OF SUCH APPEARANCE TICKET,
29 WITHIN TWENTY-FOUR HOURS OF ITS ISSUANCE, TO SUCH PARENT OR OTHER PERSON
30 LEGALLY RESPONSIBLE; OR

31 (C) WITHOUT UNNECESSARY DELAY, TAKE THE ARRESTED PERSON DIRECTLY TO
32 THE YOUTH DIVISION OF SUPERIOR COURT IN THE COUNTY IN WHICH THE ALLEGED
33 OFFENSE WAS COMMITTED UNLESS THE OFFICER DETERMINES THAT IT IS NECESSARY
34 TO QUESTION THE ARRESTED PERSON, IN WHICH CASE THE OFFICER MAY TAKE HIM
35 OR HER TO A FACILITY DESIGNATED BY THE CHIEF ADMINISTRATOR OF THE COURTS
36 AS A SUITABLE PLACE FOR THE QUESTIONING OF CHILDREN OR, UPON THE CONSENT
37 OF A PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE CARE OF THE
38 ARRESTED PERSON, TO THE ARRESTED PERSON'S RESIDENCE AND THERE QUESTION
39 HIM OR HER FOR A REASONABLE PERIOD OF TIME.

40 NOTWITHSTANDING THE FOREGOING, WHERE IT APPEARS THAT THE ARRESTED PERSON
41 IS A SEXUALLY-EXPLOITED CHILD UNDER THE AGE OF EIGHTEEN AS DEFINED IN
42 SUBDIVISION ONE OF SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL
43 SERVICES LAW, THE ARRESTING OFFICER SHALL TAKE THE ARRESTED PERSON TO AN
44 AVAILABLE SHORT-TERM SAFE HOUSE, BUT ONLY IF SUCH PERSON CONSENTS TO BE
45 TAKEN.

46 2. AN ARRESTED PERSON SHALL NOT BE QUESTIONED PURSUANT TO THIS SECTION
47 UNLESS HE OR SHE AND A PERSON REQUIRED TO BE NOTIFIED PURSUANT TO THIS
48 SECTION, IF PRESENT, HAVE BEEN ADVISED OF THE ARRESTED PERSON'S RIGHT TO
49 REMAIN SILENT, THAT ANY STATEMENTS MADE BY THE ARRESTED PERSON COULD BE
50 USED IN A COURT OF LAW, THAT THE ARRESTED PERSON HAS THE RIGHT TO HAVE
51 AN ATTORNEY PRESENT AT SUCH QUESTIONING, AND THAT IF THE ARRESTED PERSON
52 CANNOT AFFORD AN ATTORNEY, ONE WILL BE PROVIDED FREE OF CHARGE. IN
53 DETERMINING WHETHER THE ARRESTED PERSON KNOWINGLY AND INTELLIGENTLY
54 WAIVED ANY OF THESE RIGHTS, A COURT MAY CONSIDER, AMONG OTHER RELEVANT
55 FACTORS, THE ARRESTED PERSON'S AGE, THE PRESENCE OR ABSENCE OF HIS OR
56 HER PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR HIS OR HER CARE AND

1 WHETHER THERE HAS BEEN NOTIFICATION OF THE PERSON REQUIRED TO BE NOTI-
2 FIED PURSUANT TO THIS SECTION.

3 S 155.20 SPECIAL APPEARANCE TICKET.

4 1. DEFINITION, FORM AND CONTENT. A SPECIAL APPEARANCE TICKET IS A
5 WRITTEN NOTICE ISSUED AND SUBSCRIBED BY AN OFFICER OR OTHER PUBLIC SERV-
6 ANT AUTHORIZED BY STATE LAW OR LOCAL LAW ENACTED PURSUANT TO THE
7 PROVISIONS OF THE MUNICIPAL HOME RULE LAW TO ISSUE THE SAME, DIRECTING A
8 DESIGNATED PERSON TO APPEAR AT THE PROBATION SERVICE FOR THE COUNTY IN
9 WHICH THE OFFENSE OR OFFENSES FOR WHICH THE SPECIAL APPEARANCE TICKET IS
10 ISSUED WERE ALLEGEDLY COMMITTED. A SPECIAL APPEARANCE TICKET, THE FORM
11 OF WHICH SHALL BE PRESCRIBED BY RULES OF THE CHIEF ADMINISTRATOR OF THE
12 COURTS, IS NOT AN APPEARANCE TICKET AS PROVIDED IN ARTICLE ONE HUNDRED
13 FIFTY AND THE PROVISIONS OF SUCH ARTICLE DO NOT APPLY TO IT.

14 2. WHEN AND BY WHOM ISSUED. WHENEVER AN OFFICER MAKES AN ARREST TO
15 WHICH THIS ARTICLE APPLIES, SUCH OFFICER MAY, SUBJECT TO THE PROVISIONS
16 OF THIS ARTICLE, ISSUE AND SERVE A SPECIAL APPEARANCE TICKET UPON THE
17 ARRESTED PERSON.

18 3. FILING WITH THE PROBATION SERVICE. WHENEVER AN OFFICER ISSUES A
19 SPECIAL APPEARANCE TICKET PURSUANT TO THIS ARTICLE, HE OR SHE, WITHIN
20 TWENTY-FOUR HOURS, MUST FILE OR CAUSE TO BE FILED A COPY WITH THE
21 PROBATION SERVICE TO WHICH THE SPECIAL APPEARANCE TICKET IS RETURNABLE
22 AND SHALL FORWARD A COPY TO THE COMPLAINANT AND THE ARRESTED PERSON'S
23 PARENT.

24 4. FAILURE TO APPEAR AT THE PROBATION SERVICE. IF, AFTER RECEIVING A
25 SPECIAL APPEARANCE TICKET, A PERSON FAILS TO APPEAR AT THE PROBATION
26 SERVICE AT THE TIME SUCH SPECIAL APPEARANCE TICKET IS RETURNABLE, OR IF
27 THE COMPLAINANT WHO RECEIVED A COPY OF SUCH SPECIAL APPEARANCE TICKET
28 FAILS TO APPEAR AT SUCH TIME, THE PROBATION SERVICE MAY ATTEMPT TO
29 SECURE THE ATTENDANCE OF SUCH PERSON OR SUCH COMPLAINANT, AS APPROPRI-
30 ATE, THROUGH WRITTEN, TELEPHONIC OR ELECTRONIC NOTIFICATION. IF SUCH
31 NOTIFICATION IS UNSUCCESSFUL, OR IF NO EFFORTS AT NOTIFICATION ARE MADE,
32 THE PROBATION SERVICE, NOT LATER THAN SEVEN DAYS FOLLOWING THE TIME THE
33 SPECIAL APPEARANCE TICKET WAS RETURNABLE, MUST NOTIFY THE DISTRICT
34 ATTORNEY WHO MAY THEREUPON TAKE APPROPRIATE ACTION, WHICH MAY INCLUDE,
35 IN HIS OR HER DISCRETION, THE FILING OF AN ACCUSATORY INSTRUMENT WITH
36 THE YOUTH DIVISION OF THE SUPERIOR COURT. UPON SUCH FILING OF AN ACCUSA-
37 TORY INSTRUMENT, THE YOUTH DIVISION MAY ISSUE A SUMMONS OR A WARRANT OF
38 ARREST TO COMPEL THE ATTENDANCE OF THE PERSON WHO RECEIVED THE SPECIAL
39 APPEARANCE TICKET BEFORE THE COURT AND, WHERE IT DOES SO AND WHERE THE
40 PERSON FAILED TO APPEAR AT THE PROBATION SERVICE AT THE TIME SUCH
41 SPECIAL APPEARANCE TICKET WAS RETURNABLE, THE YOUTH DIVISION SHALL
42 REQUIRE THAT A REPORT BE MADE TO THE YOUTH DIVISION WITHIN THIRTY DAYS
43 ON THE EFFORTS MADE TO SECURE SUCH ATTENDANCE. UPON RECEIPT OF SUCH
44 REPORT, THE COURT SHALL NOTIFY THE PARENT OR OTHER PERSON LEGALLY
45 RESPONSIBLE FOR CARE OF THE PERSON CHARGED IN SUCH ACCUSATORY INSTRUMENT
46 OR, IF SUCH LEGALLY RESPONSIBLE PERSON IS NOT AVAILABLE, A PERSON WITH
47 WHOM THE PERSON CHARGED IN SUCH ACCUSATORY INSTRUMENT RESIDES, AND
48 REQUEST THAT SUCH PERSON OR OTHER LEGALLY RESPONSIBLE PERSON APPEAR
49 BEFORE THE COURT.

50 S 6. Section 160.10 of the criminal procedure law is amended by adding
51 a new subdivision 1-a to read as follows:

52 1-A. THE PROVISIONS OF PARAGRAPHS (B) THROUGH (D) OF SUBDIVISION ONE
53 OF THIS SECTION SHALL NOT APPLY WHERE THE ARRESTED PERSON OR DEFENDANT
54 WAS SIXTEEN OR SEVENTEEN YEARS OF AGE AT THE TIME OF THE ALLEGED
55 OFFENSE.

S 7. Section 160.20 of the criminal procedure law, as amended by chapter 108 of the laws of 1973, is amended to read as follows:

S 160.20 Fingerprinting; forwarding of fingerprints.

1. Upon the taking of fingerprints of an arrested person or defendant as prescribed in section 160.10, the appropriate police officer or agency must without unnecessary delay forward two copies of such fingerprints to the division of criminal justice services.

2. (A) UPON RECEIPT OF FINGERPRINTS TAKEN PURSUANT TO SECTION 160.10 WHERE THE PERSON FROM WHOM THEY WERE TAKEN WAS SIXTEEN OR SEVENTEEN YEARS OF AGE AT THE TIME OF THE ALLEGED OFFENSE OR OFFENSES, ALL OF WHICH ARE YOUTH DIVISION OFFENSES, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL RETAIN SUCH FINGERPRINTS DISTINCTLY IDENTIFIABLE FROM ADULT CRIMINAL RECORDS EXCEPT AS PROVIDED IN SECTION 722.50, AND SHALL NOT RELEASE SUCH FINGERPRINTS TO A FEDERAL DEPOSITORY OR TO ANY PERSON EXCEPT AS AUTHORIZED BY THIS CHAPTER. THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROMULGATE REGULATIONS TO PROTECT THE CONFIDENTIALITY OF SUCH FINGERPRINTS AND RELATED INFORMATION AND TO PREVENT ACCESS THERETO, BY, AND THE DISTRIBUTION THEREOF TO, PERSONS NOT AUTHORIZED BY LAW.

(B) UPON RECEIPT OF SUCH FINGERPRINTS, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL CLASSIFY THEM AND SEARCH ITS RECORDS FOR INFORMATION CONCERNING A PREVIOUS RECORD OF THE PERSON ARRESTED, INCLUDING ANY FAMILY COURT ADJUDICATION OR PENDING MATTER INVOLVING SUCH PERSON ARRESTED. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROMPTLY TRANSMIT TO SUCH FORWARDING OFFICER OR AGENCY A REPORT CONTAINING ANY INFORMATION ON FILE WITH RESPECT TO SUCH PERSON'S PREVIOUS RECORD OR FAMILY COURT ADJUDICATIONS AND PENDING MATTERS OR A REPORT STATING THAT THE PERSON ARRESTED HAS NO PREVIOUS RECORD ACCORDING TO ITS FILES. NOTWITHSTANDING THE FOREGOING, WHERE THE DIVISION OF CRIMINAL JUSTICE SERVICES HAS NOT RECEIVED DISPOSITION INFORMATION WITHIN TWO YEARS OF AN ARREST, IT SHALL, UNTIL SUCH INFORMATION OR UP-TO-DATE STATUS INFORMATION IS RECEIVED, WITHHOLD THE RECORD OF THAT ARREST AND ANY RELATED ACTIVITY IN DISSEMINATING CRIMINAL HISTORY INFORMATION.

S 8. The criminal procedure law is amended by adding a new article 722 to read as follows:

ARTICLE 722

PROCEEDINGS AGAINST SIXTEEN AND SEVENTEEN YEAR OLDS
AND CERTAIN OTHER INDIVIDUALS; ESTABLISHMENT OF YOUTH DIVISION AND
RELATED PROCEDURES

SECTION 722.00 ADJUSTMENT BY PROBATION SERVICE.

722.10 YOUTH DIVISION OF THE SUPERIOR COURT ESTABLISHED.

722.20 YOUTH DIVISION; PROCEDURES PRIOR TO A DETERMINATION OF
GUILT.

722.30 YOUTH DIVISION; SPECIAL PROCEDURES FOLLOWED IN CERTAIN
PROCEEDINGS AGAINST CERTAIN OFFENDERS; REMOVAL TO FAMILY
COURT.

722.40 YOUTH DIVISION; SPECIAL PROCEDURES FOLLOWING A DETERMI-
NATION OF GUILT FOR CERTAIN PERSONS WHO WERE SIXTEEN OR
SEVENTEEN YEARS OLD AT THE TIME OF OFFENSE.

722.50 YOUTH DIVISION; DISPOSITION OF RECORDS UPON TERMINATION
OF ACTIONS OR PROCEEDINGS.

722.60 YOUTH DIVISION; PRIVACY OF RECORDS.

S 722.00 ADJUSTMENT BY PROBATION SERVICE.

1. THE PROBATION SERVICE SHALL MAKE ALL REASONABLE EFFORTS TO ADJUST
ANY OFFENSE FOR WHICH A PERSON HAS BEEN ARRESTED:

1 (A) UPON THE APPEARANCE OF SUCH PERSON BEFORE SUCH PROBATION SERVICE
2 IN COMPLIANCE WITH A SPECIAL APPEARANCE TICKET ISSUED PURSUANT TO ARTI-
3 CLE ONE HUNDRED FIFTY-FIVE; OR

4 (B) PRIOR TO THE FILING OF AN ACCUSATORY INSTRUMENT WHERE SUCH PERSON
5 WAS ARRESTED FOR A YOUTH DIVISION OFFENSE, AND (I) NO SPECIAL APPEARANCE
6 TICKET WAS ISSUED PURSUANT TO ARTICLE ONE HUNDRED FIFTY-FIVE OR (II) A
7 SPECIAL APPEARANCE TICKET WAS ISSUED BUT THE PERSON FAILED TO APPEAR AT
8 THE PROBATION SERVICE WHEN REQUIRED TO DO SO; OR

9 (C) AS ORDERED BY THE COURT.

10 NOTHING IN THIS SECTION SHALL PREVENT THE COMPLAINANT FROM REQUESTING
11 THAT THE DISTRICT ATTORNEY COMMENCE A CRIMINAL ACTION AGAINST A PERSON
12 WHO HAS BEEN ARRESTED FOR AN OFFENSE OR OFFENSES THAT A PROBATION
13 SERVICE IS ATTEMPTING TO ADJUST PURSUANT TO THIS SECTION WHILE SUCH
14 EFFORTS TO ADJUST ARE ONGOING.

15 2. (A) IN PURSUIT OF SUCH ADJUSTMENT, THE PROBATION SERVICE SHALL
16 CONFER WITH THE ARRESTED PERSON; HIS OR HER PARENT OR PARENTS OR OTHER
17 PERSON OR PERSONS LEGALLY RESPONSIBLE FOR HIS OR HER CARE; THE COMPLAIN-
18 ANT; AND ANY OTHER INTERESTED PERSONS. THE PROBATION SERVICE ALSO MAY
19 DIRECT THE ARRESTED PERSON TO COMPLY WITH CERTAIN CONDITIONS (WHICH MAY
20 INCLUDE RESTITUTION OR REPARATION, IF APPROPRIATE) AND PARTICIPATE IN
21 DESIGNATED PROGRAMS. IF, FOLLOWING SUCH EFFORTS, THE PROBATION SERVICE
22 DETERMINES THAT THE OFFENSE OR OFFENSES FOR WHICH SUCH PERSON HAS BEEN
23 ARRESTED SHOULD BE ADJUSTED, THE PROBATION SERVICE SHALL ADJUST SUCH
24 OFFENSE OR OFFENSES AND SHALL SO NOTIFY THE ARRESTED PERSON, HIS OR HER
25 PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE
26 ARRESTED PERSON'S CARE, THE COMPLAINANT, THE DISTRICT ATTORNEY AND THE
27 CLERK OF THE YOUTH DIVISION. UPON ADJUSTMENT OF AN OFFENSE HEREUNDER, NO
28 FURTHER ACTION MAY BE TAKEN AGAINST THE ARRESTED PERSON INVOLVED IN
29 RELATION TO SUCH OFFENSE OR OFFENSES PURSUANT TO THIS CHAPTER.

30 (B) THE FACT THAT A PERSON IS DETAINED SHALL NOT PROHIBIT THE
31 PROBATION SERVICE FROM ADJUSTING AN OFFENSE OR OFFENSES FOR WHICH SUCH
32 PERSON WAS ARRESTED.

33 3. (A) FOLLOWING EFFORTS TO ADJUST A CRIMINAL OFFENSE OR OFFENSES
34 UNDER THIS SECTION, WHICH SHALL NOT TAKE LONGER THAN TWO MONTHS WITHOUT
35 COURT PERMISSION (OR SUCH GREATER PERIOD AS THE COURT MAY PERMIT, NOT TO
36 EXCEED AN ADDITIONAL TWO MONTHS), THE PROBATION SERVICE MUST:

37 (I) ADJUST SUCH CRIMINAL OFFENSE OR OFFENSES, IN WHICH EVENT THE
38 PROBATION SERVICE MUST SO NOTIFY THE DISTRICT ATTORNEY, THE YOUTH DIVI-
39 SION, THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES AND
40 EACH APPROPRIATE POLICE DEPARTMENT AND OTHER LAW ENFORCEMENT AGENCY
41 WHEREUPON THEY SHALL SEAL ALL RECORDS OF THE ARREST FOR SUCH OFFENSE OR
42 OFFENSES, AND DESTROY ANY PALMPRINTS OR FINGERPRINTS IN THEIR POSSESSION
43 OR CONTROL THAT WERE TAKEN FROM THE PERSON WHOSE OFFENSE OR OFFENSES
44 WERE ADJUSTED WHEN HE OR SHE WAS ARRESTED FOR SUCH OFFENSE OR OFFENSES;
45 OR

46 (II) NOTIFY THE DISTRICT ATTORNEY OF THE COUNTY IN WHICH THE PROBATION
47 SERVICE IS LOCATED, WITHIN FORTY-EIGHT HOURS OR THE NEXT COURT DAY,
48 WHICHEVER IS LATER, THAT EFFORTS TO ADJUST SUCH CRIMINAL OFFENSE OR
49 OFFENSES HAVE FAILED. UPON RECEIPT OF SUCH NOTIFICATION, THE DISTRICT
50 ATTORNEY MAY TAKE APPROPRIATE ACTION, WHICH MAY INCLUDE, IN HIS OR HER
51 DISCRETION, THE FILING OF AN ACCUSATORY INSTRUMENT WITH THE YOUTH DIVI-
52 SION.

53 (B) WHERE THE PROBATION SERVICE ADJUSTS THE OFFENSE OR OFFENSES FOR
54 WHICH A PERSON HAS BEEN ARRESTED PURSUANT TO SUBPARAGRAPH (I) OF PARA-
55 GRAPH (A) OF THIS SUBDIVISION, AND SUCH PERSON IS DETAINED AT THE TIME,

1 THE PROBATION SERVICE SHALL NOTIFY THE FACILITY IN WHICH SUCH PERSON IS
2 DETAINED TO RELEASE SUCH PERSON.

3 (C) UPON THE FAILURE OF A PERSON TO COMPLY WITH ANY CONDITION IMPOSED
4 BY THE PROBATION SERVICE PURSUANT TO SUBDIVISION ONE OF THIS SECTION,
5 THE PROBATION SERVICE MAY REIMPOSE SUCH CONDITION, IMPOSE NEW CONDITIONS
6 OR DETERMINE THAT ALL REASONABLE EFFORTS TO ADJUST THE OFFENSE OR
7 OFFENSES HAVE FAILED AND PROCEED IN ACCORDANCE WITH SUBPARAGRAPH (II) OF
8 PARAGRAPH (A) OF THIS SUBDIVISION.

9 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE PROBATION SERVICE
10 SHALL NOT TRANSMIT OR OTHERWISE DISCLOSE TO THE DISTRICT ATTORNEY ANY
11 STATEMENT MADE BY AN ARRESTED PERSON TO A PROBATION OFFICER, NOR SHALL
12 ANY STATEMENT OF AN ARRESTED PERSON MADE TO THE PROBATION SERVICE IN THE
13 COURSE OF EFFORTS PURSUANT TO THIS SECTION AT ADJUSTMENT OF A CRIMINAL
14 OFFENSE OR OFFENSES BE ADMITTED INTO EVIDENCE IN ANY CRIMINAL ACTION OR
15 PROCEEDING AGAINST SUCH PERSON OR IN ANY OTHER ACTION OR PROCEEDING
16 AGAINST SUCH PERSON IN THE YOUTH DIVISION. HOWEVER, THE PROBATION
17 SERVICE MAY MAKE A RECOMMENDATION REGARDING ADJUSTMENT OF A CRIMINAL
18 OFFENSE OR OFFENSES TO THE DISTRICT ATTORNEY AND PROVIDE SUCH INFORMA-
19 TION, INCLUDING ANY REPORT MADE BY THE ARRESTING OFFICER AND RECORD OF
20 PREVIOUS ADJUSTMENTS AND ARRESTS AS IT SHALL DEEM RELEVANT.

21 5. WHERE THE PROBATION SERVICE ADJUSTS A CRIMINAL OFFENSE OR OFFENSES
22 UNDER THIS SECTION AFTER AN ACCUSATORY INSTRUMENT CHARGING SUCH CRIMINAL
23 OFFENSE OR OFFENSES HAS BEEN FILED WITH OR TRANSFERRED TO THE YOUTH
24 DIVISION, THE YOUTH DIVISION, UPON NOTIFICATION OF SUCH ADJUSTMENT
25 PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (A) OF SUBDIVISION THREE OF
26 THIS SECTION, MUST DISMISS SUCH ACCUSATORY INSTRUMENT PURSUANT TO PARA-
27 GRAPH (G) OF SUBDIVISION ONE OF SECTION 170.30 OR PARAGRAPH (I) OF
28 SUBDIVISION ONE OF SECTION 210.20, AS APPROPRIATE, AS IF A MOTION FOR
29 SUCH DISMISSAL HAD BEEN MADE BY DEFENDANT THEREUNDER.

30 6. THE CHIEF ADMINISTRATOR OF THE COURTS SHALL PROMULGATE PROCEDURES
31 TO BE FOLLOWED BY A PROBATION SERVICE IN DISCHARGE OF ITS RESPONSIBIL-
32 ITIES PURSUANT TO THIS SECTION. SUCH RULES ALSO SHALL PRESCRIBE STAND-
33 ARDS TO BE FOLLOWED BY A PROBATION SERVICE IN DETERMINING WHETHER TO
34 ADJUST A CRIMINAL OFFENSE OR OFFENSES PURSUANT TO THIS SECTION.
35 S 722.10 YOUTH DIVISION OF THE SUPERIOR COURT ESTABLISHED.

36 THE CHIEF ADMINISTRATOR OF THE COURTS IS HEREBY DIRECTED TO ESTABLISH,
37 IN A SUPERIOR COURT IN EACH COUNTY OF THE STATE THAT EXERCISES CRIMINAL
38 JURISDICTION, A PART OF COURT TO BE KNOWN AS THE YOUTH DIVISION OF THE
39 SUPERIOR COURT FOR THE COUNTY IN WHICH SUCH COURT PRESIDES. JUDGES
40 PRESIDING IN THE YOUTH DIVISION SHALL RECEIVE TRAINING IN SPECIALIZED
41 AREAS, INCLUDING, BUT NOT LIMITED TO, JUVENILE JUSTICE, ADOLESCENT
42 DEVELOPMENT AND EFFECTIVE TREATMENT METHODS FOR REDUCING CRIME COMMIS-
43 SION BY ADOLESCENTS. WHERE THE PROVISIONS OF THE FAMILY COURT ACT ARE
44 INCLUDED OR INCORPORATED BY REFERENCE IN THIS ARTICLE, THE YOUTH DIVI-
45 SION MAY CONSIDER JUDICIAL INTERPRETATIONS OF SUCH PROVISIONS TO THE
46 EXTENT THAT THEY MAY ASSIST THE YOUTH DIVISION IN INTERPRETING THE
47 PROVISIONS OF THIS CHAPTER. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION
48 THREE OF SECTION 722.20, THE YOUTH DIVISION SHALL HAVE:

49 1. EXCLUSIVE PRELIMINARY AND TRIAL JURISDICTION OF ALL YOUTH DIVISION
50 OFFENSES INCLUDED IN AN ACCUSATORY INSTRUMENT;

51 2. PRELIMINARY AND TRIAL JURISDICTION, CONCURRENT WITH LOCAL CRIMINAL
52 COURTS, OF ALL OFFENSES INCLUDED IN AN ACCUSATORY INSTRUMENT THAT CHARG-
53 ES A PERSON WITH ONE OR MORE CRIMES AT LEAST ONE OF WHICH IS NOT A YOUTH
54 DIVISION OFFENSE, WHERE SUCH PERSON WAS AT LEAST SIXTEEN YEARS OLD AND
55 LESS THAN EIGHTEEN YEARS OLD AT THE TIME HE OR SHE IS ALLEGED TO HAVE
56 COMMITTED THE OFFENSES CHARGED; AND

1 3. JURISDICTION OVER ALL PROCEEDINGS IN RELATION TO JUVENILE OFFENDERS
2 REQUIRED BY THIS CHAPTER TO BE CONDUCTED IN SUPERIOR COURT.

3 S 722.20 YOUTH DIVISION; PROCEDURES PRIOR TO A DETERMINATION OF GUILT.

4 1. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, THE PROVISIONS OF
5 THIS CHAPTER SHALL APPLY IN EACH ACTION OR PROCEEDING IN THE YOUTH DIVI-
6 SION OF SUPERIOR COURT. SOLELY FOR PURPOSES HEREOF, A PROCEEDING IN THE
7 YOUTH DIVISION SHALL BE DEEMED A CRIMINAL PROCEEDING, THE PERSON SUBJECT
8 TO SUCH PROCEEDING SHALL BE DEEMED A DEFENDANT AND THE CHARGES AGAINST
9 SUCH PERSON SHALL BE DEEMED CRIMINAL CHARGES; PROVIDED, HOWEVER, THAT IF
10 SPECIFIC OFFENSES CHARGED AGAINST A DEFENDANT DESCRIBED IN SUBDIVISION
11 ONE OF SECTION 722.40 RESULT IN A PLEA OF GUILTY OR SUCH A DEFENDANT IS
12 OTHERWISE FOUND GUILTY THEREOF, NO CONVICTION THEREOF SHALL BE ENTERED.

13 2. NOTWITHSTANDING THE PROVISIONS OF TITLE H OF THIS CHAPTER, WHERE A
14 DEFENDANT WAS AT LEAST SIXTEEN YEARS OLD AND LESS THAN EIGHTEEN YEARS
15 OLD AT THE TIME HE OR SHE IS ALLEGED TO HAVE COMMITTED THE OFFENSES
16 CHARGED IN AN ACCUSATORY INSTRUMENT, ALL REFERENCES TO A LOCAL CRIMINAL
17 COURT IN SUCH TITLE SHALL BE DEEMED REFERENCES TO THE YOUTH DIVISION.
18 FOR THE PURPOSE OF EXERCISING PRELIMINARY JURISDICTION OVER AN ACTION OR
19 PROCEEDING PURSUANT TO SUCH TITLE, THE YOUTH DIVISION SHALL HAVE ALL THE
20 POWERS OF A LOCAL CRIMINAL COURT THEREUNDER.

21 3. WHERE THE YOUTH DIVISION IS NOT IN SESSION AND UNABLE TO ARRAIGN A
22 DEFENDANT, SUCH DEFENDANT MAY BE ARRAIGNED BEFORE ANY LOCAL CRIMINAL
23 COURT IN WHICH HE OR SHE COULD BE ARRAIGNED WERE HE OR SHE AT LEAST
24 EIGHTEEN YEARS OF AGE AT THE TIME HE OR SHE IS ALLEGED TO HAVE COMMITTED
25 THE OFFENSE OR OFFENSES CHARGED IN AN ACCUSATORY INSTRUMENT; PROVIDED,
26 HOWEVER, IN SUCH EVENT AND UNLESS THE LOCAL CRIMINAL COURT INTENDS TO
27 DISMISS THE ACTION IMMEDIATELY THEREAFTER, SUCH LOCAL CRIMINAL COURT
28 MUST TRANSFER THE MATTER FORTHWITH TO THE YOUTH DIVISION AND SHALL MAKE
29 THE MATTER RETURNABLE IN THE YOUTH DIVISION ON THE NEXT DAY THE YOUTH
30 DIVISION IS IN SESSION AFTER ARRAIGNMENT IN THE LOCAL CRIMINAL COURT.

31 4. (A) UPON ANY OCCASION WHEN THE YOUTH DIVISION (OR A LOCAL CRIMINAL
32 COURT AS PROVIDED HEREUNDER WHEN THE YOUTH DIVISION IS NOT IN SESSION)
33 IS REQUIRED TO ISSUE A SECURING ORDER WITH RESPECT TO A PRINCIPAL WHO
34 WAS SIXTEEN OR SEVENTEEN YEARS OLD AT THE TIME OF HIS OR HER ALLEGED
35 OFFENSE OR OFFENSES, AND SUCH OFFENSE OR OFFENSES ARE EXCLUSIVELY YOUTH
36 DIVISION OFFENSES, THE COURT MAY NOT COMMIT SUCH PRINCIPAL TO CUSTODY
37 UNLESS AVAILABLE LESS RESTRICTIVE ALTERNATIVES THERETO, INCLUDING CONDI-
38 TIONAL RELEASE, WOULD NOT BE APPROPRIATE. IF SUCH COURT DOES COMMIT SUCH
39 PRINCIPAL TO CUSTODY, SUCH COMMITMENT MUST BE IN A DETENTION FACILITY IN
40 WHICH A CHILD SUBJECT TO THE PROVISIONS OF ARTICLE THREE OF THE FAMILY
41 COURT ACT COULD BE DETAINED.

42 (B) ONCE A PRINCIPAL DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION IS
43 COMMITTED TO CUSTODY, THE COURT SHALL MAKE THE FOLLOWING FINDINGS, WHICH
44 SHALL BE INCLUDED IN A WRITTEN ORDER AS REQUIRED BY FEDERAL LAW:

45 (I) WHETHER THE CONTINUATION OF THE PRINCIPAL OUTSIDE OF CUSTODY WOULD
46 BE CONTRARY TO HIS OR HER BEST INTERESTS BASED UPON, AND LIMITED TO, THE
47 FACTS AND CIRCUMSTANCES AVAILABLE TO THE COURT AT THE TIME OF THE
48 ARRAIGNMENT; AND

49 (II) WHERE APPROPRIATE AND CONSISTENT WITH THE NEED FOR PROTECTION OF
50 THE COMMUNITY, WHETHER REASONABLE EFFORTS WERE MADE PRIOR TO THE DATE ON
51 WHICH THE PRINCIPAL WAS COMMITTED TO CUSTODY THAT RESULTED IN THE SECUR-
52 ING ORDER TO PREVENT OR ELIMINATE THE NEED FOR COMMITTING THE PRINCIPAL
53 TO CUSTODY OR, IF THE PRINCIPAL HAD BEEN COMMITTED TO CUSTODY PRIOR TO
54 ARRAIGNMENT, WHERE APPROPRIATE AND CONSISTENT WITH THE NEED FOR
55 PROTECTION OF THE COMMUNITY, WHETHER REASONABLE EFFORTS WERE MADE TO
56 MAKE IT POSSIBLE FOR THE PRINCIPAL TO BE RELEASED FROM CUSTODY.

S 722.30 YOUTH DIVISION; SPECIAL PROCEDURES FOLLOWED IN CERTAIN PROCEEDINGS AGAINST CERTAIN OFFENDERS; REMOVAL TO FAMILY COURT.

1. UPON MOTION OF THE DEFENDANT MADE AFTER FILING OF AN ACCUSATORY INSTRUMENT AND PRIOR TO A JUDGMENT OF CONVICTION, THE YOUTH DIVISION OF THE SUPERIOR COURT MAY DIRECT THAT ALL PROCEEDINGS AGAINST SUCH DEFENDANT IN SUCH YOUTH DIVISION FOLLOWING A PLEA OF GUILTY OR OTHER DETERMINATION OF GUILT, WHETHER OR NOT SUCH PLEA OR OTHER DETERMINATION SHALL HAVE OCCURRED AT THE TIME OF SUCH MOTION, SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 722.40 IN ANY CASE WHERE SUCH DEFENDANT:

(A) IS A JUVENILE OFFENDER AND THE CASE HAS NOT BEEN REMOVED TO FAMILY COURT PURSUANT TO THIS CHAPTER; OR

(B) WAS AT LEAST SIXTEEN YEARS OLD AND LESS THAN EIGHTEEN YEARS OLD AT THE TIME HE OR SHE IS ALLEGED TO HAVE COMMITTED AN OFFENSE OR OFFENSES CHARGED IN THE ACCUSATORY INSTRUMENT AT LEAST ONE OF WHICH IS A VIOLENT FELONY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW OR AN OFFENSE LISTED IN PARAGRAPH TWO OF SUBDIVISION EIGHTEEN OF SECTION 10.00 OF SUCH LAW.

2. IN DETERMINING A MOTION PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE YOUTH DIVISION MUST CONSIDER THE FACTORS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION AND MAY NOT GRANT SUCH A MOTION UNLESS IT DETERMINES THAT TO DO SO WOULD BE IN THE INTERESTS OF JUSTICE; PROVIDED, HOWEVER, THE YOUTH DIVISION MAY NOT GRANT SUCH A MOTION UNLESS:

(A) THE YOUTH DIVISION FINDS SPECIFIC FACTORS, ONE OR MORE OF WHICH REASONABLY SUPPORT SUCH MOTION, SHOWING: (I) MITIGATING CIRCUMSTANCES THAT BEAR DIRECTLY UPON THE MANNER IN WHICH THE CRIME WAS COMMITTED; (II) WHERE THE DEFENDANT WAS NOT THE SOLE PARTICIPANT IN THE CRIME, THE DEFENDANT'S PARTICIPATION WAS RELATIVELY MINOR ALTHOUGH NOT SO MINOR AS TO CONSTITUTE A DEFENSE TO THE PROSECUTION; OR (III) POSSIBLE DEFICIENCIES IN THE PROOF OF THE CRIME;

(B) AFTER CONSIDERATION OF THE FACTORS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION, THE YOUTH DIVISION DETERMINES THAT FURTHER PROCEEDINGS IN RELATION TO THE DEFENDANT CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 722.40 WOULD BE IN THE INTERESTS OF JUSTICE; AND

(C) THE DISTRICT ATTORNEY CONSENTS THERETO.

3. (A) UPON MOTION OF THE DEFENDANT MADE AFTER FILING OF AN ACCUSATORY INSTRUMENT AND PRIOR TO A JUDGMENT OF CONVICTION, THE YOUTH DIVISION, AFTER CONSIDERATION OF THE RELEVANT FACTORS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION AND IF THE YOUTH DIVISION DETERMINES THAT TO DO SO WOULD BE IN THE INTEREST OF JUSTICE, MAY DIRECT THAT THE ACTION AGAINST THE DEFENDANT BE REMOVED TO FAMILY COURT IN ANY CASE WHERE THE DEFENDANT IS CHARGED IN THE YOUTH DIVISION EXCLUSIVELY WITH ONE OR MORE YOUTH DIVISION OFFENSES AND:

(I) THE DEFENDANT IS A PARTY TO OR IS OTHERWISE A SUBJECT OF PENDING PROCEEDINGS IN THE FAMILY COURT UNDER ARTICLE THREE, SEVEN, EIGHT, TEN, TEN-A, TEN-B OR TEN-C OF THE FAMILY COURT ACT; OR

(II) THE COURT DETERMINES THAT THE DEFENDANT IS A SEXUALLY-EXPLOITED CHILD UNDER THE AGE OF EIGHTEEN AS DEFINED IN SUBDIVISION ONE OF SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW.

(B) WHERE THE YOUTH DIVISION DIRECTS REMOVAL OF AN ACTION TO FAMILY COURT PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION, THE PROVISIONS OF SUBDIVISIONS SIX THROUGH NINE OF SECTION 725.05 AND SECTIONS 725.10 AND 725.15 OF THIS TITLE SHALL APPLY TO SUCH REMOVAL PROVIDED THAT:

(I) FOR PURPOSES OF SUBDIVISION SIX OF SECTION 725.05, "THE JUVENILE" SHALL REFER TO THE DEFENDANT IN THE ACTION BEING REMOVED; AND

(II) NOTWITHSTANDING THE PROVISIONS OF ARTICLE THREE OF THE FAMILY COURT ACT, UPON SUCH REMOVAL, THE FAMILY COURT SHALL HAVE AND SHALL EXERCISE JURISDICTION OVER THE DEFENDANT IN THE PROCEEDING REQUIRED TO BE ORIGINATED IN SUCH COURT PURSUANT TO SUBDIVISION ONE OF SECTION 725.10 AS IF THE DEFENDANT WERE OVER SEVEN AND LESS THAN SIXTEEN YEARS OF AGE.

4. IN MAKING ITS DETERMINATION PURSUANT TO SUBDIVISION ONE OR THREE OF THIS SECTION, THE YOUTH DIVISION SHALL, TO THE EXTENT APPLICABLE, EXAMINE INDIVIDUALLY AND COLLECTIVELY, THE FOLLOWING:

(A) THE SERIOUSNESS AND CIRCUMSTANCES OF THE OFFENSE;

(B) THE EXTENT OF HARM CAUSED BY THE OFFENSE;

(C) THE EVIDENCE OF GUILT, WHETHER ADMISSIBLE OR INADMISSIBLE AT TRIAL;

(D) THE HISTORY, CHARACTER AND CONDITION OF THE DEFENDANT, INCLUDING HIS OR HER DEVELOPMENTAL AND COGNITIVE LEVELS;

(E) THE PURPOSE AND EFFECT OF IMPOSING UPON THE DEFENDANT A SENTENCE AUTHORIZED FOR THE OFFENSE;

(F) THE IMPACT THAT PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 722.40 MAY HAVE ON THE SAFETY OR WELFARE OF THE COMMUNITY AND THE DEFENDANT'S NEEDS AND BEST INTERESTS;

(G) THE IMPACT THAT PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 722.40 WOULD HAVE UPON THE CONFIDENCE OF THE PUBLIC IN THE CRIMINAL JUSTICE SYSTEM;

(H) WHERE THE COURT DEEMS IT APPROPRIATE, THE CONCERNS OF THE COMPLAINANT OR VICTIM WITH RESPECT TO THE MOTION; AND

(I) ANY OTHER RELEVANT FACT INDICATING THAT A JUDGMENT OF CONVICTION IN A CRIMINAL COURT WOULD SERVE NO USEFUL PURPOSE.

5. THE PROVISIONS OF SUBDIVISIONS ONE AND TWO OF SECTION 210.45, GOVERNING PROCEDURE ON A MOTION TO DISMISS AN INDICTMENT, SHALL APPLY TO PROCEDURE UPON A MOTION PURSUANT TO SUBDIVISION ONE OR THREE OF THIS SECTION. AFTER ALL PAPERS OF BOTH PARTIES HAVE BEEN FILED AND AFTER ALL DOCUMENTARY EVIDENCE, IF ANY, HAS BEEN SUBMITTED, THE YOUTH DIVISION MUST CONSIDER THE SAME FOR THE PURPOSE OF DETERMINING WHETHER THE MOTION IS DETERMINABLE ON THE MOTION PAPERS SUBMITTED AND, IF NOT, MAY MAKE SUCH INQUIRY AS IT DEEMS NECESSARY FOR THE PURPOSE OF MAKING A DETERMINATION.

6. FOR THE PURPOSE OF MAKING A DETERMINATION PURSUANT TO THIS SECTION, ANY EVIDENCE WHICH IS NOT LEGALLY PRIVILEGED MAY BE INTRODUCED. IF THE DEFENDANT TESTIFIES, HIS OR HER TESTIMONY MAY NOT BE INTRODUCED AGAINST HIM OR HER IN ANY FUTURE PROCEEDING, EXCEPT TO IMPEACH HIS OR HER TESTIMONY AT SUCH FUTURE PROCEEDING AS INCONSISTENT PRIOR TESTIMONY.

7. (A) IF THE YOUTH DIVISION ORDERS THE PROCEEDINGS TO CONTINUE UNDER THE PROVISIONS OF SECTION 722.40, IT SHALL STATE ON THE RECORD, IN DETAIL AND NOT IN CONCLUSORY TERMS, THE FACTOR OR FACTORS UPON WHICH ITS DETERMINATION IS BASED.

(B) THE DISTRICT ATTORNEY SHALL STATE UPON THE RECORD, IN DETAIL AND NOT IN CONCLUSORY TERMS, THE REASONS FOR HIS OR HER CONSENT TO HAVE THE PROCEEDINGS CONTINUE UNDER THE PROVISIONS OF SECTION 722.40.

S 722.40 YOUTH DIVISION; SPECIAL PROCEDURES FOLLOWING A DETERMINATION OF GUILT FOR CERTAIN PERSONS WHO WERE SIXTEEN OR SEVENTEEN YEARS OLD AT THE TIME OF OFFENSE.

1. IF A DEFENDANT WHO IS CHARGED IN THE YOUTH DIVISION OF A SUPERIOR COURT WITH ONE OR MORE YOUTH DIVISION OFFENSES (OR WHO IS ENTITLED TO PROCEED PURSUANT TO THIS SECTION UPON GRANT OF A MOTION MADE PURSUANT TO

1 SUBDIVISION ONE OF SECTION 722.30) PLEADS GUILTY TO SUCH OFFENSE OR
2 OFFENSES OR IS OTHERWISE FOUND GUILTY THEREOF, THE COURT SHALL SCHEDULE
3 A DISPOSITIONAL HEARING PURSUANT TO THIS SECTION. A DEFENDANT WHO
4 PLEADS GUILTY TO OR IS OTHERWISE FOUND GUILTY OF A CRIME THAT IS NOT A
5 YOUTH DIVISION OFFENSE SHALL NOT BE DEEMED "A DEFENDANT WHO IS CHARGED
6 IN THE YOUTH DIVISION OF A SUPERIOR COURT WITH ONE OR MORE YOUTH DIVI-
7 SION OFFENSES" FOR PURPOSES OF THIS SUBDIVISION NOTWITHSTANDING THAT, IN
8 THE SAME ACTION OR PROCEEDING, HE OR SHE PLEADS GUILTY TO OR IS OTHER-
9 WISE FOUND GUILTY OF ONE OR MORE OTHER OFFENSES THAT ARE YOUTH DIVISION
10 OFFENSES.

11 2. FOR PURPOSES OF THIS SECTION, A "DISPOSITIONAL HEARING" MEANS A
12 HEARING TO DETERMINE WHETHER THE DEFENDANT REQUIRES SUPERVISION, TREAT-
13 MENT OR CONFINEMENT. WHERE THE YOUTH DIVISION ORDERS A DISPOSITIONAL
14 HEARING PURSUANT TO THIS SECTION, ALL FURTHER PROCEEDINGS IN RELATION TO
15 THE DEFENDANT SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF
16 PARTS FIVE AND SIX OF ARTICLE THREE OF THE FAMILY COURT ACT, PROVIDED
17 THAT REFERENCES THEREIN:

18 (A) TO A "RESPONDENT" OR TO A "CHILD" SHALL MEAN TO THE DEFENDANT IN
19 PROCEEDINGS IN THE YOUTH DIVISION, AND TO A "PRESENTMENT AGENCY" SHALL
20 MEAN TO THE DISTRICT ATTORNEY;

21 (B) TO A "DELINQUENCY PROCEEDING" OR TO A "DELINQUENCY CASE" SHALL
22 MEAN TO AN ACTION OR PROCEEDING IN A YOUTH DIVISION, AND TO A "FINDING
23 OF DELINQUENCY" SHALL MEAN TO A DETERMINATION OF GUILT;

24 (C) TO "SUBDIVISION ONE OF SECTION 345.1" SHALL MEAN SUBDIVISION ONE
25 OF THIS SECTION;

26 (D) TO "AN ORDER PURSUANT TO SECTION 315.3" SHALL MEAN TO AN ADJOURN-
27 MENT IN CONTEMPLATION OF DISMISSAL; AND

28 (E) TO "THIS ARTICLE" SHALL MEAN TO ARTICLE SEVEN HUNDRED TWENTY-TWO
29 OF THIS CHAPTER.

30 3. PROVIDED FURTHER THAT, FOR PURPOSES OF THIS SUBDIVISION, REFERENCES
31 CONTAINED IN SUBDIVISION SIX OF SECTION 355.3 OF THE FAMILY COURT ACT TO
32 A "RESPONDENT'S EIGHTEENTH BIRTHDAY" AND TO "THE CHILD'S TWENTY-FIRST
33 BIRTHDAY" SHALL MEAN TO A "DEFENDANT'S TWENTIETH BIRTHDAY" AND TO "THE
34 DEFENDANT'S TWENTY-THIRD BIRTHDAY", RESPECTIVELY.
35 S 722.50 YOUTH DIVISION; DISPOSITION OF RECORDS UPON TERMINATION OF
36 ACTIONS OR PROCEEDINGS.

37 1. WHERE, IN AN ACTION OR PROCEEDING PURSUANT TO THIS ARTICLE AGAINST
38 A DEFENDANT WHO WAS CHARGED IN THE YOUTH DIVISION OF A SUPERIOR COURT
39 EXCLUSIVELY WITH ONE OR MORE YOUTH DIVISION OFFENSES (OR WHO WAS ENTI-
40 TLED TO PROCEED PURSUANT TO SECTION 722.40 UPON GRANT OF A MOTION MADE
41 PURSUANT TO SUBDIVISION ONE OF SECTION 722.30), THE DEFENDANT PLEADS
42 GUILTY TO THE OFFENSE OR OFFENSES WITH WHICH HE OR SHE WAS CHARGED OR IS
43 OTHERWISE DETERMINED TO BE GUILTY THEREOF, THE PROVISIONS OF SECTIONS
44 375.2, 380.1, 381.2 AND 381.3 OF THE FAMILY COURT ACT SHALL APPLY TO
45 DISPOSITION OF THE RECORDS OF SUCH ACTION OR PROCEEDING. FOR PURPOSES OF
46 THIS SECTION, REFERENCES IN SUCH SECTIONS OF THE FAMILY COURT ACT:

47 (A) TO A "RESPONDENT" OR TO A "CHILD" SHALL MEAN TO THE DEFENDANT IN
48 PROCEEDINGS IN THE YOUTH DIVISION;

49 (B) TO A "DELINQUENCY PROCEEDING" SHALL MEAN TO AN ACTION OR PROCEED-
50 ING IN A YOUTH DIVISION;

51 (C) TO A "PRESENTMENT AGENCY" OR THE "DIRECTOR OF THE APPROPRIATE
52 PRESENTMENT AGENCY" SHALL MEAN TO THE DISTRICT ATTORNEY;

53 (D) TO A "FINDING OF DELINQUENCY PURSUANT TO SUBDIVISION ONE OF
54 SECTION 352.1" OR TO A "FINDING OF JUVENILE DELINQUENCY" SHALL MEAN TO A
55 PLEA OF GUILTY TO THE OFFENSE OR OFFENSES WITH WHICH A DEFENDANT IS
56 CHARGED OR A VERDICT OF GUILTY THERETO AND TO "PERSON ADJUDICATED A

JUVENILE DELINQUENT" SHALL MEAN TO A DEFENDANT WHO HAS MADE SUCH A PLEA OR BEEN SUBJECT TO SUCH A VERDICT;

(E) TO "RESPONDENT'S SIXTEENTH BIRTHDAY" SHALL MEAN TO THE DEFENDANT'S EIGHTEENTH BIRTHDAY;

(F) TO "THIS ARTICLE" SHALL MEAN TO ARTICLE SEVEN HUNDRED TWENTY-TWO OF THIS CHAPTER;

(G) TO "FAMILY COURT" OR "COURT" SHALL MEAN TO THE YOUTH DIVISION.

2. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION THREE OF SECTION 160.50, TERMINATION OF AN ACTION OR PROCEEDING IN THE YOUTH DIVISION OTHER THAN BY A DEFENDANT'S PLEA OF GUILTY TO THE OFFENSE OR OFFENSES WITH WHICH HE OR SHE WAS CHARGED OR BY A VERDICT OF GUILTY THERETO, WHERE THE DEFENDANT WAS CHARGED WITH ONE OR MORE YOUTH DIVISION OFFENSES (OR WHERE THE DEFENDANT WAS ENTITLED TO PROCEED PURSUANT TO SECTION 722.40 UPON GRANT OF A MOTION MADE PURSUANT TO SUBDIVISION ONE OF SECTION 722.30), SHALL BE DEEMED A "TERMINATION OF A CRIMINAL ACTION OR PROCEEDING AGAINST A PERSON IN FAVOR OF SUCH PERSON" FOR PURPOSES OF SUCH SECTION 160.50.

3. WHERE FINGERPRINTS, PALMPRINTS OR PHOTOGRAPHS WERE TAKEN PURSUANT TO SECTION 160.10 AND THE ACTION WAS SUBSEQUENTLY ADJUDICATED IN ACCORDANCE WITH SECTION 722.40, THE CLERK OF THE YOUTH DIVISION SHALL FORWARD OR CAUSE TO BE FORWARDED TO THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES NOTIFICATION OF SUCH ADJUDICATION AND SUCH RELATED INFORMATION AS MAY BE REQUIRED BY SUCH COMMISSIONER. IF A DEFENDANT HAS PLEADED GUILTY OR OTHERWISE BEEN DETERMINED TO HAVE BEEN GUILTY OF OFFENSES OTHER THAN A FELONY, ALL SUCH FINGERPRINTS, PALMPRINTS, PHOTOGRAPHS, AND COPIES THEREOF, AND ALL INFORMATION RELATING TO SUCH ALLEGATIONS OBTAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO SECTION 160.10 SHALL BE DESTROYED FORTHWITH. IF A DEFENDANT HAS PLEADED GUILTY OR OTHERWISE BEEN DETERMINED TO HAVE BEEN GUILTY OF A FELONY, ALL FINGERPRINTS AND RELATED INFORMATION OBTAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO SUCH SECTION SHALL BECOME PART OF SUCH DIVISION'S PERMANENT ADULT CRIMINAL RECORD FOR THAT PERSON; PROVIDED, HOWEVER, THAT WHEN SUCH PERSON REACHES THE AGE OF TWENTY-ONE, OR HAS BEEN DISCHARGED FROM ANY PLACEMENT IMPOSED UNDER THIS ARTICLE, WHICHEVER OCCURS LATER, AND HAS NO CRIMINAL CONVICTIONS OR PENDING CRIMINAL ACTIONS WHICH ULTIMATELY TERMINATE IN A CRIMINAL CONVICTION, ALL FINGERPRINTS, PALMPRINTS, PHOTOGRAPHS, AND RELATED INFORMATION AND COPIES THEREOF OBTAINED PURSUANT TO SECTION 160.10 IN THE POSSESSION OF THE DIVISION OF CRIMINAL JUSTICE SERVICES, ANY POLICE DEPARTMENT, LAW ENFORCEMENT AGENCY OR ANY OTHER AGENCY SHALL BE DESTROYED FORTHWITH. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL NOTIFY THE AGENCY OR AGENCIES WHICH FORWARDED FINGERPRINTS TO SUCH DIVISION PURSUANT TO SECTION 160.10 OF THEIR OBLIGATION TO DESTROY THOSE RECORDS IN THEIR POSSESSION.

S 722.60 YOUTH DIVISION; PRIVACY OF RECORDS.

THE RECORDS OF ANY PROCEEDING IN THE YOUTH DIVISION OF A SUPERIOR COURT AGAINST A DEFENDANT WHO IS CHARGED IN SUCH COURT WITH ONE OR MORE YOUTH DIVISION OFFENSES, UNLESS PERMITTED TO PROCEED IN ACCORDANCE WITH SECTION 722.40 UPON A DETERMINATION MADE PURSUANT TO SECTION 722.30, SHALL NOT BE OPEN TO INDISCRIMINATE PUBLIC INSPECTION. HOWEVER, THE YOUTH DIVISION IN ITS DISCRETION IN ANY SUCH CASE MAY PERMIT THE INSPECTION OF ANY PAPERS OR RECORDS. ANY DULY AUTHORIZED AGENCY, ASSOCIATION, SOCIETY OR INSTITUTION TO WHICH A DEFENDANT IN SUCH A CASE IS COMMITTED MAY CAUSE AN INSPECTION OF THE RECORD OF INVESTIGATION TO BE HAD AND MAY IN THE DISCRETION OF THE COURT OBTAIN A COPY OF THE WHOLE OR PART OF SUCH RECORD.

1 S 9. Section 725.00 of the criminal procedure law, as amended by chap-
2 ter 411 of the laws of 1979, is amended to read as follows:

3 S 725.00 Applicability.

4 The provisions of this article apply in any case where a court directs
5 that an action or charge is to be removed to the family court under
6 section 180.75, 190.71, 210.43, 220.10, 310.85 [or], 330.25 OR 722.30 of
7 this chapter.

8 S 10. Subdivision 1 of section 243 of the executive law, as amended by
9 section 17 of part A of chapter 56 of the laws of 2010, is amended to
10 read as follows:

11 1. The office shall exercise general supervision over the adminis-
12 tration of probation services throughout the state, including probation
13 in family courts AND IN THE YOUTH DIVISIONS OF SUPERIOR COURT and shall
14 collect statistical and other information and make recommendations
15 regarding the administration of probation services in the courts. The
16 office shall endeavor to secure the effective application of the
17 probation system and the enforcement of the probation laws and the laws
18 relating to family courts AND IN THE YOUTH DIVISIONS OF SUPERIOR COURT
19 throughout the state. After consultation with the state probation
20 commission, the office shall recommend to the commissioner general rules
21 which shall regulate methods and procedure in the administration of
22 probation services, including investigation of defendants prior to
23 sentence, and children prior to adjudication, supervision, case work,
24 record keeping, and accounting, program planning and research so as to
25 secure the most effective application of the probation system and the
26 most efficient enforcement of the probation laws throughout the state.
27 Such rules shall provide that the probation investigations ordered by
28 the court in designated felony act cases under subdivision one of
29 section 351.1 of the family court act shall have priority over other
30 cases arising under articles three and seven of such act. When duly
31 adopted by the commissioner, such rules shall be binding upon all
32 probation officers and when duly adopted shall have the force and effect
33 of law, but shall not supersede rules that may be adopted pursuant to
34 the family court act. The office shall keep informed as to the work of
35 all probation officers and shall from time to time inquire into and
36 report upon their conduct and efficiency. The office may investigate the
37 work of any probation bureau or probation officer and shall have access
38 to all records and probation offices. The office may issue subpoenas to
39 compel the attendance of witnesses or the production of books and
40 papers. The office may administer oaths and examine persons under oath.
41 The office may recommend to the appropriate authorities the removal of
42 any probation officer. The office may from time to time publish reports
43 regarding probation including probation in family courts AND IN THE
44 YOUTH DIVISIONS OF SUPERIOR COURT, and the operation of the probation
45 system including probation in family courts AND IN THE YOUTH DIVISIONS
46 OF SUPERIOR COURT, and any other information regarding probation as the
47 office may determine provided expenditures for such purpose are within
48 amounts appropriated therefor.

49 S 11. Subdivision 3 of section 502 of the executive law, as amended by
50 section 1 of subpart B of part Q of chapter 58 of the laws of 2011, is
51 amended to read as follows:

52 3. "Detention" means the temporary care and maintenance of A PRINCIPAL
53 DESCRIBED IN SUBDIVISION FOUR OF SECTION 722.20 OF THE CRIMINAL PROCE-
54 DURE LAW WHO IS SUBJECT TO A SECURING ORDER PURSUANT TO SUCH LAW OR OF
55 youth held away from their homes pursuant to article three or seven of
56 the family court act, or held pending a hearing for alleged violation of

1 the conditions of release from an office of children and family services
2 facility or authorized agency, or held pending a hearing for alleged
3 violation of the condition of parole as a juvenile offender, or held
4 pending return to a jurisdiction other than the one in which the youth
5 is held, or held pursuant to a securing order of a criminal court if the
6 youth named therein as principal is charged as a juvenile offender or
7 held pending a hearing on an extension of placement or held pending
8 transfer to a facility upon commitment or placement by a court. Only
9 alleged or convicted juvenile offenders who have not attained their
10 eighteenth birthday shall be subject to detention in a detention facili-
11 ty. ONLY PRINCIPALS DESCRIBED IN SUBDIVISION FOUR OF SECTION 722.20 OF
12 THE CRIMINAL PROCEDURE LAW WHO HAVE NOT ATTAINED THEIR TWENTIETH BIRTH-
13 DAY SHALL BE SUBJECT TO DETENTION IN A DETENTION FACILITY.

14 S 12. Subdivision 2 of section 212 of the judiciary law is amended by
15 adding a new paragraph (s) to read as follows:

16 (S) ADOPT RULES ESTABLISHING A TRAINING PROGRAM IN SPECIALIZED AREAS
17 INVOLVING YOUTH INCLUDING, BUT NOT LIMITED TO, JUVENILE JUSTICE, ADOLES-
18 CENT DEVELOPMENT AND EFFECTIVE TREATMENT METHODS FOR REDUCING CRIME
19 COMMITTED BY ADOLESCENTS; AND PROVIDING THAT, AS REQUIRED BY SECTION
20 722.10 OF THE CRIMINAL PROCEDURE LAW, EACH JUDGE OR JUSTICE WHO PRESIDES
21 IN THE YOUTH DIVISION OF A SUPERIOR COURT RECEIVE SUCH TRAINING.

22 S 13. Subdivision 1 of section 30.00 of the penal law, as amended by
23 chapter 481 of the laws of 1978, is amended to read as follows:

24 1. Except as provided in subdivision two OR TWO-A of this section, a
25 person less than [sixteen] EIGHTEEN years old is not criminally respon-
26 sible for conduct.

27 S 14. Section 30.00 of the penal law is amended by adding two new
28 subdivisions 2-a and 4 to read as follows:

29 2-A. A PERSON SIXTEEN OR SEVENTEEN YEARS OF AGE IS CRIMINALLY RESPON-
30 SIBLE FOR ACTS CONSTITUTING A VIOLENT FELONY OFFENSE AS PRESCRIBED IN
31 SUBDIVISION ONE OF SECTION 70.02 OF THIS CHAPTER OR AN OFFENSE LISTED IN
32 PARAGRAPH TWO OF SUBDIVISION EIGHTEEN OF SECTION 10.00 OF THIS CHAPTER.

33 4. NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION, A PERSON WHO IS AT
34 LEAST SIXTEEN YEARS OLD AND LESS THAN EIGHTEEN YEARS OLD AT THE TIME HE
35 OR SHE IS ALLEGED TO HAVE COMMITTED AN ACT THAT WOULD CONSTITUTE A CRIME
36 IF COMMITTED BY A PERSON AT LEAST EIGHTEEN YEARS OLD SHALL BE SUBJECT TO
37 THE FILING OF CHARGES AND THE PROSECUTION THEREOF EXCLUSIVELY IN ACCORD-
38 ANCE WITH THE PROVISIONS OF ARTICLE SEVEN HUNDRED TWENTY-TWO OF THE
39 CRIMINAL PROCEDURE LAW.

40 S 15. This act shall take effect on the first day of November in the
41 second year following the date on which it shall have become a law and
42 shall apply to all arrests made and all actions and proceedings
43 commenced on or after such effective date; provided, however, at any
44 time on or after the date on which this act shall have become a law, the
45 state office of children and family services and the commissioner of the
46 division of criminal justice services, the latter upon the recommenda-
47 tion of the office of probation and correctional alternatives, may each
48 promulgate such rules and regulations as may be necessary to enable
49 implementation of this act on its effective date and such rules and
50 regulations shall take effect on such date as the promulgating agency
51 shall prescribe. The rules promulgated hereunder by the state office of
52 children and family services may require political subdivisions to
53 submit plans for the approval of secure and non-secure detention, alter-
54 natives to detention placement and dispositional alternatives for
55 defendants in the youth division of the superior court.