

7020

I N S E N A T E

April 23, 2012

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and
when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, the executive law, the family court act and the penal law, in relation to raising the age of criminal responsibility; and to repeal certain provisions of the criminal procedure law, relating thereto

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

1 Section 1. Subdivision 42 of section 1.20 of the criminal procedure
2 law, as amended by chapter 7 of the laws of 2007, is amended to read as
3 follows:
4 42. "Juvenile offender" means, WHERE PROSECUTION IS AUTHORIZED BY LAW,
5 INCLUDING BUT NOT LIMITED TO SECTION 726.05 OF THIS CHAPTER AND SECTION
6 325.5 OF THE FAMILY COURT ACT: (1) a person, thirteen years old who is
7 criminally responsible for acts constituting murder in the second degree
8 as defined in subdivisions one and two of section 125.25 of the penal
9 law, or such conduct as a sexually motivated felony, where authorized
10 pursuant to section 130.91 of the penal law; and (2) a person fourteen
11 [or], fifteen, SIXTEEN, OR SEVENTEEN years old who is criminally respon-
12 sible for acts constituting the crimes defined in subdivisions one and
13 two of section 125.25 (murder in the second degree) and in subdivision
14 three of such section provided that the underlying crime for the murder
15 charge is one for which such person is criminally responsible; section
16 135.25 (kidnapping in the first degree); 150.20 (arson in the first
17 degree); subdivisions one and two of section 120.10 (assault in the
18 first degree); 125.20 (manslaughter in the first degree); subdivisions
19 one and two of section 130.35 (rape in the first degree); subdivisions
20 one and two of section 130.50 (criminal sexual act in the first degree);
21 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary
22 in the first degree); subdivision one of section 140.25 (burglary in the
23 second degree); 150.15 (arson in the second degree); 160.15 (robbery in
24 the first degree); subdivision two of section 160.10 (robbery in the
25 second degree) of the penal law; or section 265.03 of the penal law,
26 where such machine gun or such firearm is possessed on school grounds,

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

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1 as that phrase is defined in subdivision fourteen of section 220.00 of
2 the penal law; or defined in the penal law as an attempt to commit
3 murder in the second degree or kidnapping in the first degree, or such
4 conduct as a sexually motivated felony, where authorized pursuant to
5 section 130.91 of the penal law.

6 S 2. Paragraphs (a) and (b) of subdivision 3 and subdivision 5 of
7 section 180.75 of the criminal procedure law, paragraph (a) of subdivi-
8 sion 3 as added by chapter 481 of the laws of 1978, paragraph (b) of
9 subdivision 3 as amended by chapter 920 of the laws of 1982 and subdivi-
10 sion 5 as added by chapter 411 of the laws of 1979, are amended to read
11 as follows:

12 (a) If there is reasonable cause to believe that the defendant commit-
13 ted a crime for which a person under the age of [sixteen] EIGHTEEN is
14 criminally responsible, the court must order that the defendant be held
15 for the action of a grand jury of the appropriate superior court, and it
16 must promptly transmit to such superior court the order, the felony
17 complaint, the supporting depositions and all other pertinent documents.
18 Until such papers are received by the superior court, the action is
19 deemed to be still pending in the local criminal court; or

20 (b) If there is not reasonable cause to believe that the defendant
21 committed a crime for which a person under the age of [sixteen] EIGHTEEN
22 is criminally responsible but there is reasonable cause to believe that
23 the defendant is a "juvenile delinquent" as defined in subdivision one
24 of section 301.2 of the family court act, the court must specify the act
25 or acts it found reasonable cause to believe the defendant did and
26 direct that the action be removed to the family court in accordance with
27 the provisions of article seven hundred twenty-five of this chapter; or

28 5. Notwithstanding the provisions of subdivision two, three, or four,
29 if a currently undetermined felony complaint against a juvenile offender
30 is pending in a local criminal court, and the defendant has not waived a
31 hearing pursuant to subdivision two and a hearing pursuant to subdivi-
32 sion three has not commenced, the defendant may move in the superior
33 court which would exercise the trial jurisdiction of the offense or
34 offenses charged were an indictment therefor to result, to remove the
35 action to family court. The procedural rules of subdivisions one and two
36 of section 210.45 of this chapter are applicable to a motion pursuant to
37 this subdivision. Upon such motion, the superior court shall be author-
38 ized to sit as a local criminal court to exercise the preliminary juris-
39 diction specified in subdivisions two and three of this section, and
40 shall proceed and determine the motion as provided in section 210.43 of
41 this chapter[; provided, however, that the exception provisions of para-
42 graph (b) of subdivision one of such section 210.43 shall not apply when
43 there is not reasonable cause to believe that the juvenile offender
44 committed one or more of the crimes enumerated therein, and in such
45 event the provisions of paragraph (a) thereof shall apply].

46 S 3. Subdivisions (a), (b) and (c) of section 190.71 of the criminal
47 procedure law, subdivision (a) as amended by chapter 7 of the laws of
48 2007 and subdivisions (b) and (c) as added by chapter 481 of the laws of
49 1978, are amended to read as follows:

50 (a) Except as provided in subdivision six of section 200.20 of this
51 chapter, a grand jury may not indict (i) a person thirteen years of age
52 for any conduct or crime other than conduct constituting a crime defined
53 in subdivisions one and two of section 125.25 (murder in the second
54 degree) or such conduct as a sexually motivated felony, where authorized
55 pursuant to section 130.91 of the penal law; (ii) a person fourteen
56 [or], fifteen, SIXTEEN OR SEVENTEEN years of age for any conduct or

1 crime other than conduct constituting a crime defined in subdivisions
2 one and two of section 125.25 (murder in the second degree) and in
3 subdivision three of such section provided that the underlying crime for
4 the murder charge is one for which such person is criminally responsi-
5 ble; 135.25 (kidnapping in the first degree); 150.20 (arson in the first
6 degree); subdivisions one and two of section 120.10 (assault in the
7 first degree); 125.20 (manslaughter in the first degree); subdivisions
8 one and two of section 130.35 (rape in the first degree); subdivisions
9 one and two of section 130.50 (criminal sexual act in the first degree);
10 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary
11 in the first degree); subdivision one of section 140.25 (burglary in the
12 second degree); 150.15 (arson in the second degree); 160.15 (robbery in
13 the first degree); subdivision two of section 160.10 (robbery in the
14 second degree) of the penal law; subdivision four of section 265.02 of
15 the penal law, where such firearm is possessed on school grounds, as
16 that phrase is defined in subdivision fourteen of section 220.00 of the
17 penal law; or section 265.03 of the penal law, where such machine gun or
18 such firearm is possessed on school grounds, as that phrase is defined
19 in subdivision fourteen of section 220.00 of the penal law; or defined
20 in the penal law as an attempt to commit murder in the second degree or
21 kidnapping in the first degree, or such conduct as a sexually motivated
22 felony, where authorized pursuant to section 130.91 of the penal law.

23 (b) A grand jury may vote to file a request to remove a charge to the
24 family court if it finds that a person thirteen, fourteen [or], fifteen,
25 SIXTEEN OR SEVENTEEN years of age did an act which, if done by a person
26 over the age of [sixteen] EIGHTEEN, would constitute a crime provided
27 (1) such act is one for which it may not indict; (2) it does not indict
28 such person for a crime; and (3) the evidence before it is legally
29 sufficient to establish that such person did such act and competent and
30 admissible evidence before it provides reasonable cause to believe that
31 such person did such act.

32 (c) Upon voting to remove a charge to the family court pursuant to
33 subdivision (b) of this section, the grand jury must, through its fore-
34 man or acting foreman, file a request to transfer such charge to the
35 family court. Such request shall be filed with the court by which it was
36 impaneled. It must (1) allege that a person named therein did any act
37 which, if done by a person over the age of [sixteen] EIGHTEEN, would
38 constitute a crime; (2) specify the act and the time and place of its
39 commission; and (3) be signed by the foreman or the acting foreman.

40 S 4. Subdivision 6 of section 200.20 of the criminal procedure law, as
41 added by chapter 136 of the laws of 1980, is amended to read as follows:

42 6. Where an indictment charges at least one offense against a defend-
43 ant who was under the age of [sixteen] EIGHTEEN at the time of the
44 commission of the crime and who did not lack criminal responsibility for
45 such crime by reason of infancy, the indictment may, in addition, charge
46 in separate counts one or more other offenses for which such person
47 would not have been criminally responsible by reason of infancy, if:

48 (a) the offense for which the defendant is criminally responsible and
49 the one or more other offenses for which he would not have been crimi-
50 nally responsible by reason of infancy are based upon the same act or
51 upon the same criminal transaction, as that term is defined in subdivi-
52 sion two of section 40.10 of this chapter; or

53 (b) the offenses are of such nature that either proof of the first
54 offense would be material and admissible as evidence in chief upon a
55 trial of the second, or proof of the second would be material and admis-
56 sible as evidence in chief upon a trial of the first.

1 S 5. Subdivision 5 of section 210.20 of the criminal procedure law, as
2 added by chapter 136 of the laws of 1980, is amended to read as follows:

3 5. If the court dismisses one or more counts of an indictment, against
4 a defendant who was under the age of [sixteen] EIGHTEEN at the time of
5 the commission of the crime and who did not lack criminal responsibility
6 for such crime by reason of infancy, and one or more other counts of the
7 indictment having been joined in the indictment solely with the
8 dismissed count pursuant to subdivision six of section 200.20 is not
9 dismissed, the court must direct that such count be removed to the fami-
10 ly court in accordance with article seven hundred twenty-five of this
11 chapter.

12 S 6. Paragraph (b) of subdivision 1 of section 210.43 of the criminal
13 procedure law, as amended by chapter 264 of the laws of 2003, is amended
14 to read as follows:

15 (b) [with the consent of the district attorney,] order removal of an
16 action involving an indictment charging a juvenile offender with murder
17 in the second degree as defined in section 125.25 of the penal law; rape
18 in the first degree, as defined in subdivision one of section 130.35 of
19 the penal law; criminal sexual act in the first degree, as defined in
20 subdivision one of section 130.50 of the penal law; or an armed felony
21 as defined in paragraph (a) of subdivision forty-one of section 1.20, to
22 the family court pursuant to the provisions of article seven hundred
23 twenty-five of this chapter if the court finds one or more of the
24 following factors: (i) mitigating circumstances that bear directly upon
25 the manner in which the crime was committed; (ii) where the defendant
26 was not the sole participant in the crime, the defendant's participation
27 was relatively minor although not so minor as to constitute a defense to
28 the prosecution; or (iii) possible deficiencies in the proof of the
29 crime, and, after consideration of the factors set forth in subdivision
30 two of this section, the court determined that removal of the action to
31 the family court would be in the interests of justice.

32 S 7. Subparagraphs (i), (iii) and the second undesignated paragraph of
33 paragraph (g) of subdivision 5 of section 220.10 of the criminal proce-
34 dure law, subparagraph (i) as amended by chapter 410 of the laws of
35 1979, subparagraph (iii) as amended by chapter 264 of the laws of 2003
36 and the second undesignated paragraph as amended by chapter 920 of the
37 laws of 1982, are amended to read as follows:

38 (i) If the indictment charges a person fourteen [or] fifteen, SIXTEEN
39 OR SEVENTEEN years old with the crime of murder in the second degree any
40 plea of guilty entered pursuant to subdivision three or four must be a
41 plea of guilty of a crime for which the defendant is criminally respon-
42 sible;

43 (iii) Where the indictment does not charge a crime specified in
44 subparagraph (i) of this paragraph, the district attorney may recommend
45 removal of the action to the family court. Upon making such recommenda-
46 tion the district attorney shall submit a subscribed memorandum setting
47 forth: (1) a recommendation that the interests of justice would best be
48 served by removal of the action to the family court; and (2) if the
49 indictment charges a thirteen year old with the crime of murder in the
50 second degree, or a fourteen [or], fifteen, SIXTEEN OR SEVENTEEN year
51 old with the crimes of rape in the first degree as defined in subdivi-
52 sion one of section 130.35 of the penal law, or criminal sexual act in
53 the first degree as defined in subdivision one of section 130.50 of the
54 penal law, or an armed felony as defined in paragraph (a) of subdivision
55 forty-one of section 1.20 of this chapter specific factors, one or more
56 of which reasonably supports the recommendation, showing, (i) mitigating

1 circumstances that bear directly upon the manner in which the crime was
2 committed, or (ii) where the defendant was not the sole participant in
3 the crime, that the defendant's participation was relatively minor
4 although not so minor as to constitute a defense to the prosecution, or
5 (iii) possible deficiencies in proof of the crime, or (iv) where the
6 juvenile offender has no previous adjudications of having committed a
7 designated felony act, as defined in subdivision eight of section 301.2
8 of the family court act, regardless of the age of the offender at the
9 time of commission of the act, that the criminal act was not part of a
10 pattern of criminal behavior and, in view of the history of the offen-
11 der, is not likely to be repeated.

12 If the court is of the opinion [based on specific factors set forth in
13 the district attorney's memorandum] that the interests of justice would
14 best be served by removal of the action to the family court, a plea of
15 guilty of a crime or act for which the defendant is not criminally
16 responsible may be entered pursuant to subdivision three or four of this
17 section, except that a thirteen year old charged with the crime of
18 murder in the second degree may only plead to a designated felony act,
19 as defined in subdivision eight of section 301.2 of the family court
20 act.

21 S 8. Subdivision 5 of section 300.50 of the criminal procedure law,
22 as added by chapter 481 of the laws of 1978, is amended to read as
23 follows:

24 5. Where the indictment charges a crime committed by the defendant
25 while he OR SHE was under the age of [sixteen] EIGHTEEN but a lesser
26 included offense would be one for which the defendant is not criminally
27 responsible by reason of infancy, such lesser included offense may
28 nevertheless be submitted to the jury in the same manner as an offense
29 for which the defendant would be criminally responsible notwithstanding
30 the fact that a verdict of guilty would not result in a criminal
31 conviction.

32 S 9. Section 330.25 of the criminal procedure law, as added by chapter
33 481 of the laws of 1978, and subdivision 2 as amended by chapter 920 of
34 the laws of 1982, is amended to read as follows:
35 S 330.25 Removal after verdict.

36 1. Where a defendant is a juvenile offender who does not stand
37 convicted of murder in the second degree, upon motion [and with the
38 consent of the district attorney], the action may be removed to the
39 family court in the interests of justice pursuant to article seven
40 hundred twenty-five of this chapter notwithstanding the verdict.

41 2. [If the district attorney consents to the motion for removal pursu-
42 ant to this section, he shall file a subscribed memorandum with the
43 court setting forth (1) a recommendation that] IN DETERMINING THE
44 MOTION, THE COURT SHALL CONSIDER: (1) WHETHER the interests of justice
45 would best be served by removal of the action to the family court; and
46 (2) if the conviction is of an offense set forth in paragraph (b) of
47 subdivision one of section 210.43 of this chapter, WHETHER specific
48 factors EXIST, one or more of which reasonably [support] SUPPORTS the
49 [recommendation] MOTION, showing, (i) mitigating circumstances that bear
50 directly upon the manner in which the crime was committed, or (ii) where
51 the defendant was not the sole participant in the crime, that the
52 defendant's participation was relatively minor although not so minor as
53 to constitute a defense to prosecution, or (iii) where the juvenile
54 offender has no previous adjudications of having committed a designated
55 felony act, as defined in subdivision eight of section 301.2 of the
56 family court act, regardless of the age of the offender at the time of

1 commission of the act, that the criminal act was not part of a pattern
2 of criminal behavior and, in view of the history of the offender, is not
3 likely to be repeated.

4 3. If the court is of the opinion, based upon the specific factors
5 [set forth in the district attorney's memorandum] SHOWN TO THE COURT,
6 that the interests of justice would best be served by removal of the
7 action to the family court, the verdict shall be set aside and a plea of
8 guilty of a crime or act for which the defendant is not criminally
9 responsible may be entered pursuant to subdivision three or four of
10 section 220.10 of this chapter. Upon accepting any such plea, the court
11 must specify upon the record the [portion or portions of the district
12 attorney's statement] FACTORS the court is relying upon as the basis of
13 its opinion and that it believes the interests of justice would best be
14 served by removal of the proceeding to the family court. Such plea
15 shall then be deemed to be a juvenile delinquency fact determination and
16 the court upon entry thereof must direct that the action be removed to
17 the family court in accordance with the provisions of article seven
18 hundred twenty-five of this chapter.

19 S 10. Section 510.15 of the criminal procedure law, as amended by
20 chapter 411 of the laws of 1979, subdivision 1 as designated and subdi-
21 vision 2 as added by chapter 359 of the laws of 1980, is amended to read
22 as follows:

23 S 510.15 Commitment of principal under [sixteen] EIGHTEEN.

24 1. When a principal who is under the age of [sixteen] EIGHTEEN is
25 committed to the custody of the sheriff the court must direct that the
26 principal be taken to and lodged in a place certified by the state
27 [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES as a juve-
28 nile detention facility for the reception of children. Where such a
29 direction is made the sheriff shall deliver the principal in accordance
30 therewith and such person shall although lodged and cared for in a juve-
31 nile detention facility continue to be deemed to be in the custody of
32 the sheriff. No principal under the age of [sixteen] EIGHTEEN to whom
33 the provisions of this section may apply shall be detained in any pris-
34 on, jail, lockup, or other place used for adults convicted of a crime or
35 under arrest and charged with the commission of a crime without the
36 approval of the state [division for youth] OFFICE OF CHILDREN AND FAMILY
37 SERVICES in the case of each principal and the statement of its reasons
38 therefor. The sheriff shall not be liable for any acts done to or by
39 such principal resulting from negligence in the detention of and care
40 for such principal, when the principal is not in the actual custody of
41 the sheriff.

42 2. Except upon consent of the defendant or for good cause shown, in
43 any case in which a new securing order is issued for a principal previ-
44 ously committed to the custody of the sheriff pursuant to this section,
45 such order shall further direct the sheriff to deliver the principal
46 from a juvenile detention facility to the person or place specified in
47 the order.

48 S 11. Subdivision 1 of section 720.10 of the criminal procedure law,
49 as amended by chapter 411 of the laws of 1979, is amended to read as
50 follows:

51 1. "Youth" means a person charged with a crime alleged to have been
52 committed when he was at least [sixteen] EIGHTEEN years old and less
53 than [nineteen] TWENTY years old or a person charged with being a juve-
54 nile offender as defined in subdivision forty-two of section 1.20 of
55 this chapter.

1 S 12. Paragraph (f) of subdivision 2 of section 725.20 of the criminal
2 procedure law is REPEALED and paragraph (g) is relettered paragraph (f).

3 S 13. Paragraph (e) of subdivision 2 of section 725.20 of the criminal
4 procedure law, as amended by chapter 411 of the laws of 1979, is amended
5 to read as follows:

6 (e) Where the direction is one authorized by subdivision one of
7 section 210.43 of this chapter, a copy of that portion of the minutes
8 containing the statement by the court pursuant to paragraph [(a)] A of
9 subdivision five of section 210.43; AND

10 S 14. The criminal procedure law is amended by adding a new article
11 726 to read as follows:

12 ARTICLE 726

13 REMOVAL OF PROCEEDINGS AGAINST AN ALLEGED
14 JUVENILE DELINQUENT FROM FAMILY COURT TO A SUPERIOR COURT
15 SECTION 726.00 APPLICABILITY.

16 726.05 FILING OF ORDER OF REMOVAL AND PROCEEDINGS THEREON.
17 S 726.00 APPLICABILITY.

18 THE PROVISIONS OF THIS ARTICLE APPLY IN ANY CASE WHERE A COURT DIRECTS
19 THAT AN ACTION OR CHARGE BROUGHT BY A JUVENILE DELINQUENCY PETITION,
20 PURSUANT TO ARTICLE THREE OF THE FAMILY COURT ACT, AGAINST A JUVENILE
21 OFFENDER WHO WAS THIRTEEN, FOURTEEN OR FIFTEEN YEARS OLD AT THE TIME OF
22 SUCH OFFENSE, IS TO BE REMOVED FROM FAMILY COURT TO A SUPERIOR CRIMINAL
23 COURT PURSUANT TO SECTION 325.5 OF THE FAMILY COURT ACT.

24 S 726.05 FILING OF ORDER OF REMOVAL AND PROCEEDINGS THEREON.

25 1. WHEN A FAMILY COURT DIRECTS THAT AN ACTION OR CHARGE BROUGHT
26 AGAINST A JUVENILE OFFENDER BY A JUVENILE DELINQUENCY PETITION PURSUANT
27 TO ARTICLE THREE OF THE FAMILY COURT ACT BE REMOVED FROM FAMILY COURT TO
28 A SUPERIOR CRIMINAL COURT PURSUANT TO SECTION 325.5 OF THE FAMILY COURT
29 ACT, THE DISTRICT ATTORNEY WHO REQUESTED SUCH REMOVAL SHALL PROMPTLY
30 FILE SUCH REMOVAL ORDER AND THE APPROPRIATE CHARGING DOCUMENTS WITH THE
31 SUPERIOR CRIMINAL COURT THAT WOULD EXERCISE TRIAL JURISDICTION OVER SUCH
32 OFFENSE OR OFFENSES WERE AN INDICTMENT THEREFOR TO RESULT.

33 2. FOLLOWING THE GRANTING OF SUCH AN ORDER OF REMOVAL, THE JUVENILE
34 SHALL BE BROUGHT FORTHWITH AND WITH ALL REASONABLE SPEED BEFORE THE
35 APPROPRIATE SUPERIOR CRIMINAL COURT FOR APPROPRIATE PROCEEDINGS. FOR
36 PURPOSES OF THIS SECTION, A JUDGE OR JUSTICE OF A SUPERIOR COURT SHALL
37 PRESIDE OVER SUCH PROCEEDINGS AS SUCH A JUDGE OR JUSTICE OF THE SUPERIOR
38 CRIMINAL COURT, OR AS A LOCAL CRIMINAL COURT, AS APPROPRIATE.

39 3. THE SUPERIOR CRIMINAL COURT MUST ASSUME JURISDICTION AND PROCEED AS
40 THE CIRCUMSTANCES REQUIRE, IN THE MANNER AND TO THE EXTENT PROVIDED BY
41 LAW.

42 4. UPON THE FILING OF AN ORDER OF REMOVAL IN THE SUPERIOR CRIMINAL
43 COURT, THE FAMILY COURT ARTICLE THREE ACTION UPON WHICH THE ORDER IS
44 BASED SHALL BE TERMINATED AND THERE SHALL BE NO FURTHER PROCEEDINGS IN
45 THE FAMILY COURT WITH RESPECT TO THE OFFENSE, UNLESS SUCH ACTION IS
46 REMOVED BACK TO THE FAMILY COURT IN ACCORDANCE WITH THE PROVISIONS OF
47 ARTICLE SEVEN HUNDRED TWENTY-FIVE OF THIS CHAPTER. ALL FURTHER
48 PROCEEDINGS INCLUDING MOTIONS AND APPEALS SHALL BE IN ACCORDANCE WITH
49 LAWS APPERTAINING TO THE CRIMINAL COURT AND FOR THIS PURPOSE ALL FIND-
50 INGS, DETERMINATIONS, VERDICTS AND ORDERS, OTHER THAN THE ORDER OF
51 REMOVAL, SHALL BE DEEMED TO HAVE BEEN MADE BY THE SUPERIOR CRIMINAL
52 COURT.

53 S 15. Section 507-d of the executive law, as amended by chapter 465 of
54 the laws of 1992, is amended to read as follows:

55 S 507-d. Confinement of juvenile delinquents under sentence of the
56 courts of the United States. The directors of secure and limited secure

1 facilities shall receive and safely keep in such facilities, subject to
2 the provisions of this article, any person not over the age of [sixteen]
3 EIGHTEEN years convicted of any offense against the United States, and
4 sentenced to imprisonment by any court of the United States, sitting
5 within this state, until such sentences be executed, or until such
6 delinquent shall be discharged by due course of law, conditioned upon
7 the United States supporting such delinquent and paying the expenses
8 attendant upon the execution of such sentence.

9 S 16. Subparagraph 1 of paragraph (a) of subdivision 5 of section 530
10 of the executive law, as amended by section 5 of subpart B of part Q of
11 chapter 58 of the laws of 2011, is amended to read as follows:

12 (1) temporary care, maintenance and supervision provided alleged juve-
13 nile delinquents and persons in need of supervision in detention facili-
14 ties certified pursuant to sections seven hundred twenty and 305.2 of
15 the family court act by the office of children and family services,
16 pending adjudication of alleged delinquency or alleged need of super-
17 vision by the family court, or pending transfer to institutions to which
18 committed or placed by such court or while awaiting disposition by such
19 court after adjudication or held pursuant to a securing order of a crim-
20 inal court if the person named therein as principal is under [sixteen]
21 EIGHTEEN; or,

22 S 17. Subdivision (b) of section 117 of the family court act, as
23 amended by chapter 7 of the laws of 2007, is amended to read as follows:

24 (b) For every juvenile delinquency proceeding under article three
25 involving an allegation of an act committed by a person which, if done
26 by an adult, would be a crime (i) defined in sections 125.27 (murder in
27 the first degree); 125.25 (murder in the second degree); 135.25 (kidnap-
28 ping in the first degree); or 150.20 (arson in the first degree) of the
29 penal law committed by a person thirteen, fourteen or fifteen years of
30 age; or such conduct committed as a sexually motivated felony, where
31 authorized pursuant to section 130.91 of the penal law; (ii) defined in
32 sections 120.10 (assault in the first degree); 125.20 (manslaughter in
33 the first degree); 130.35 (rape in the first degree); 130.50 (criminal
34 sexual act in the first degree); 135.20 (kidnapping in the second
35 degree), but only where the abduction involved the use or threat of use
36 of deadly physical force; 150.15 (arson in the second degree); or 160.15
37 (robbery in the first degree) of the penal law committed by a person
38 thirteen, fourteen [or], fifteen, SIXTEEN OR SEVENTEEN years of age; or
39 such conduct committed as a sexually motivated felony, where authorized
40 pursuant to section 130.91 of the penal law; (iii) defined in the penal
41 law as an attempt to commit murder in the first or second degree or
42 kidnapping in the first degree committed by a person thirteen, fourteen
43 or fifteen years of age; or such conduct committed as a sexually moti-
44 vated felony, where authorized pursuant to section 130.91 of the penal
45 law; (iv) defined in section 140.30 (burglary in the first degree);
46 subdivision one of section 140.25 (burglary in the second degree);
47 subdivision two of section 160.10 (robbery in the second degree) of the
48 penal law; or section 265.03 of the penal law, where such machine gun or
49 such firearm is possessed on school grounds, as that phrase is defined
50 in subdivision fourteen of section 220.00 of the penal law committed by
51 a person fourteen [or], fifteen, SIXTEEN OR SEVENTEEN years of age; or
52 such conduct committed as a sexually motivated felony, where authorized
53 pursuant to section 130.91 of the penal law; (v) defined in section
54 120.05 (assault in the second degree) or 160.10 (robbery in the second
55 degree) of the penal law committed by a person fourteen or fifteen years
56 of age but only where there has been a prior finding by a court that

1 such person has previously committed an act which, if committed by an
2 adult, would be the crime of assault in the second degree, robbery in
3 the second degree or any designated felony act specified in clause (i),
4 (ii) or (iii) of this subdivision regardless of the age of such person
5 at the time of the commission of the prior act; or (vi) other than a
6 misdemeanor, committed by a person at least seven but less than
7 [sixteen] EIGHTEEN years of age, but only where there has been two prior
8 findings by the court that such person has committed a prior act which,
9 if committed by an adult would be a felony:

10 (i) There is hereby established in the family court in the city of New
11 York at least one "designated felony act part." Such part or parts shall
12 be held separate from all other proceedings of the court, and shall have
13 jurisdiction over all proceedings involving such an allegation. All such
14 proceedings shall be originated in or be transferred to this part from
15 other parts as they are made known to the court.

16 (ii) Outside the city of New York, all proceedings involving such an
17 allegation shall have a hearing preference over every other proceeding
18 in the court, except proceedings under article ten.

19 (III) THERE IS HEREBY ESTABLISHED IN THE FAMILY COURT ONE OR MORE
20 "VIOLATION AND TRAFFIC INFRACTION PARTS". SUCH PARTS SHALL HAVE JURIS-
21 DICTION, OVER ANY OFFENSE THAT IS NOT A FELONY, OR A MISDEMEANOR UNDER
22 THE PENAL LAW ALLEGEDLY COMMITTED BY A PERSON SIXTEEN OR SEVENTEEN YEARS
23 OF AGE. NOTHING IN THIS SUBPARAGRAPH SHALL PREVENT A JUDGE PRESIDING
24 OVER A PROCEEDING CONCERNING SUCH AN OFFENSE, AFTER NOTICE AND AN OPPOR-
25 TUNITY FOR THE PARTIES TO BE HEARD, FROM TRANSFERRING SUCH PROCEEDING TO
26 OR CONSOLIDATING SUCH PROCEEDING BEFORE ANOTHER FAMILY COURT JUDGE, IN
27 THE SAME JURISDICTION, BEFORE WHOM A RELATED PROCEEDING, INVOLVING THE
28 SAME RESPONDENT, IS PENDING.

29 S 18. Subdivision (a) of section 158 of the family court act is
30 amended to read as follows:

31 (a) The family court may place in protective custody a person under
32 [sixteen] EIGHTEEN years of age who is a material witness, as provided
33 by law.

34 S 19. The family court act is amended by adding a new section 325.5 to
35 read as follows:

36 S 325.5. REMOVAL FOR PROCEEDINGS IN A SUPERIOR COURT; CERTAIN ALLEGED
37 OFFENSES BY YOUTHS AGE THIRTEEN, FOURTEEN OR FIFTEEN. 1. (A) (I)
38 NOTWITHSTANDING ANY INCONSISTENT PROVISION OF PART FOUR OF THIS ARTICLE,
39 AT ANY TIME WITHIN TEN DAYS AFTER THE INITIAL APPEARANCE WITH RESPECT TO
40 A JUVENILE DELINQUENCY PETITION WHICH ALLEGES CONDUCT THAT IS ALSO A
41 JUVENILE OFFENSE, AS DEFINED IN SUBDIVISION EIGHTEEN OF SECTION 10.00 OF
42 THE PENAL LAW, AND THAT IS PENDING PURSUANT TO THIS ARTICLE AGAINST A
43 YOUTH WHO WAS THIRTEEN, FOURTEEN OR FIFTEEN YEARS OF AGE AT THE TIME OF
44 SUCH ALLEGED OFFENSE, IF SUCH RESPONDENT HAS NOT ENTERED AN ADMISSION TO
45 ALL SUCH JUVENILE OFFENSE COUNTS PURSUANT TO SECTION 321.2 OF THIS PART
46 THAT HAS BEEN ACCEPTED PURSUANT TO SECTION 321.3 OF THIS PART, HAS NOT
47 WAIVED A FACT-FINDING HEARING PURSUANT TO PART FOUR OF THIS ARTICLE, AND
48 SUCH A FACT-FINDING HEARING HAS NOT OTHERWISE COMMENCED, THE APPROPRIATE
49 PRESENTMENT AGENCY SHALL, UPON THE WRITTEN REQUEST OF THE DISTRICT
50 ATTORNEY HAVING GEOGRAPHIC JURISDICTION OVER SUCH ALLEGED OFFENSE,
51 PROMPTLY SERVE AND FILE, IN THE FAMILY COURT IN WHICH SUCH PETITION IS
52 PENDING, A MOTION SEEKING TO REMOVE SUCH JUVENILE OFFENDER COUNT OR
53 COUNTS TO THE SUPERIOR CRIMINAL COURT THAT WOULD EXERCISE TRIAL JURIS-
54 DICTION OVER SUCH OFFENSE OR OFFENSES WERE AN INDICTMENT THEREFOR TO
55 RESULT.

(II) SUCH REQUEST BY THE PRESENTMENT AGENCY MAY (IF SOUGHT IN SUCH DISTRICT ATTORNEY'S WRITTEN REQUEST) INCLUDE A REQUEST TO REMOVE TO THE SUPERIOR CRIMINAL COURT OTHER SPECIFIED RELATED OFFENSES OF THE TYPE DESCRIBED IN SUBDIVISION SIX OF SECTION 200.20 OF THE CRIMINAL PROCEDURE LAW, PROVIDED THAT THE RESPONDENT HAS NOT ENTERED AN ADMISSION TO SUCH COUNT OR COUNTS PURSUANT TO SECTION 321.2 OF THIS PART THAT HAS BEEN ACCEPTED PURSUANT TO SECTION 321.3 OF THIS PART, HAS NOT WAIVED A FACT-FINDING HEARING PURSUANT TO PART FOUR OF THIS ARTICLE, AND SUCH A FACT-FINDING HEARING HAS NOT OTHERWISE COMMENCED.

(B) (I) IN ITS MOTION, WHICH SHALL BE IN WRITING, THE PRESENTMENT AGENCY SHALL SET FORTH THE REASONS FOR THE MOTION FOR REMOVAL, WHICH SHALL BE STATED IN DETAIL AND NOT IN CONCLUSORY TERMS. THE WRITTEN REQUEST OF THE DISTRICT ATTORNEY, WHICH MUST ALSO BE STATED IN DETAIL AND NOT IN CONCLUSORY TERMS, SHALL BE APPENDED TO THE MOTION. SUCH DISTRICT ATTORNEY, OR AN ASSISTANT DISTRICT ATTORNEY ACTING ON BEHALF OF SUCH DISTRICT ATTORNEY, MAY ALSO SERVE AND FILE AN AFFIRMATION IN THE NATURE OF AN AMICUS CURIAE IN THE FAMILY COURT IN SUPPORT OF SUCH MOTION.

(II) THE COURT MAY GRANT A HEARING ON THE MOTION AT THE REQUEST OF ANY PARTY. THE PRESENTMENT AGENCY SHALL HAVE THE BURDEN TO SHOW: (A) AGGRAVATING CIRCUMSTANCES THAT BEAR DIRECTLY ON THE MANNER IN WHICH SUCH CRIME OR CRIMES WERE COMMITTED; AND (B) IF THE RESPONDENT WAS NOT THE SOLE PARTICIPANT IN SUCH CRIME OR CRIMES, THAT THE RESPONDENT PLAYED A MAJOR ROLE OR WAS THE DOMINANT PARTICIPANT IN SUCH CRIMES. IF SUCH BURDEN IS MET, THE COURT MAY GRANT REMOVAL ONLY IF, AFTER CONSIDERING THE FACTORS SET FORTH IN SUBDIVISION TWO OF SECTION 210.43 OF THE CRIMINAL PROCEDURE LAW, IT DETERMINES THAT REMOVAL TO A SUPERIOR COURT IS NECESSARY TO ACCOMPLISH THE PURPOSES SET FORTH IN SECTION 1.05 OF THE PENAL LAW AND ASSURE A JUST AND FAIR RESULT.

2. (A) IF THE COURT ORDERS REMOVAL OF ALL OR A PORTION OF THE ACTION TO A SUPERIOR CRIMINAL COURT PURSUANT TO SUBDIVISION ONE OF THIS SECTION, IT SHALL STATE ON THE RECORD THE FACTORS UPON WHICH ITS DETERMINATION IS BASED, AND SHALL GIVE ITS REASONS FOR REMOVAL IN DETAIL AND NOT IN CONCLUSORY TERMS.

(B) WHERE A MOTION FOR REMOVAL PURSUANT TO SUBDIVISION ONE OF THIS SECTION HAS BEEN DENIED, NO FURTHER MOTION PURSUANT TO THIS SECTION MAY BE MADE BY THE PRESENTMENT AGENCY WITH RESPECT TO THE SAME OFFENSE OR OFFENSES.

3. (A) WHERE AN ORDER OF REMOVAL HAS BEEN GRANTED PURSUANT TO THIS SECTION, AND THE RESPONDENT IS IN DETENTION PURSUANT TO SECTION 320.5 OF THIS PART, THE ORDER OF REMOVAL TO THE SUPERIOR CRIMINAL COURT MUST PROVIDE THAT THE POLICE OFFICER OR PEACE OFFICER WHO MADE THE ARREST OR SOME OTHER PROPER OFFICER FORTHWITH AND WITH ALL REASONABLE SPEED TAKE THE JUVENILE TO THE DESIGNATED SUPERIOR COURT. THE ORDER OF REMOVAL MUST SPECIFY A DATE CERTAIN WITHIN TEN DAYS FROM THE DATE OF THE ORDER OF REMOVAL FOR THE RESPONDENT'S APPEARANCE IN SUCH SUPERIOR COURT PROVIDED, HOWEVER, THAT WHERE THE RESPONDENT IS IN DETENTION OR IN THE CUSTODY OF THE SHERIFF THAT DATE MUST BE NOT LATER THAN THE NEXT DAY THE SUPERIOR COURT IS IN SESSION.

(B) THE ORDER OF REMOVAL MUST DIRECT THAT ALL OF THE PLEADINGS AND PROCEEDINGS IN THE ACTION, OR A CERTIFIED COPY OF SAME BE TRANSFERRED TO THE DESIGNATED SUPERIOR COURT AND BE DELIVERED TO AND FILED WITH THE CLERK OF THAT COURT. FOR THE PURPOSES OF THIS SUBDIVISION THE TERM "PLEADINGS AND PROCEEDINGS" INCLUDES THE MINUTES OF ANY HEARING, INQUIRY OR TRIAL HELD IN THE ACTION AND THE MINUTES OF ANY PLEA ACCEPTED AND ENTERED.

1 (C) THE ORDER OF REMOVAL MUST BE SIGNED BY THE JUDGE OF THE FAMILY
2 COURT WHO DIRECTED THE REMOVAL.

3 S 20. Subdivisions 1, 8 and 14 of section 301.2 of the family court
4 act, subdivisions 1 and 14 as added by chapter 920 of the laws of 1982
5 and subdivision 8 as amended by chapter 7 of the laws of 2007, are
6 amended to read as follows:

7 1. "Juvenile delinquent" means a person over seven and less than
8 [sixteen] EIGHTEEN years of age, who, having committed an act that would
9 constitute a crime if committed by an adult, (a) is not criminally
10 responsible for such conduct by reason of infancy, [or] (b) is the
11 defendant in an action ordered removed from a criminal court to the
12 family court pursuant to article seven hundred twenty-five of the crimi-
13 nal procedure law, OR (C) COULD BE, BUT IS NOT, THE DEFENDANT IN AN
14 ACTION AGAINST A SIXTEEN OR SEVENTEEN YEAR OLD AUTHORIZED BY SUBDIVISION
15 FORTY-TWO OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW.

16 8. "Designated felony act" means an act which, if done by an adult,
17 would be a crime: (i) defined in sections 125.27 (murder in the first
18 degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the
19 first degree); or 150.20 (arson in the first degree) of the penal law
20 committed by a person thirteen, fourteen [or], fifteen, SIXTEEN OR
21 SEVENTEEN years of age; or such conduct committed as a sexually moti-
22 vated felony, where authorized pursuant to section 130.91 of the penal
23 law; (ii) defined in sections 120.10 (assault in the first degree);
24 125.20 (manslaughter in the first degree); 130.35 (rape in the first
25 degree); 130.50 (criminal sexual act in the first degree); 130.70
26 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the
27 second degree) but only where the abduction involved the use or threat
28 of use of deadly physical force; 150.15 (arson in the second degree) or
29 160.15 (robbery in the first degree) of the penal law committed by a
30 person thirteen, fourteen [or], fifteen, SIXTEEN, OR SEVENTEEN years of
31 age; or such conduct committed as a sexually motivated felony, where
32 authorized pursuant to section 130.91 of the penal law; (iii) defined in
33 the penal law as an attempt to commit murder in the first or second
34 degree or kidnapping in the first degree committed by a person thirteen,
35 fourteen [or], fifteen, SIXTEEN OR SEVENTEEN years of age; or such
36 conduct committed as a sexually motivated felony, where authorized
37 pursuant to section 130.91 of the penal law; (iv) defined in section
38 140.30 (burglary in the first degree); subdivision one of section 140.25
39 (burglary in the second degree); subdivision two of section 160.10
40 (robbery in the second degree) of the penal law; or section 265.03 of
41 the penal law, where such machine gun or such firearm is possessed on
42 school grounds, as that phrase is defined in subdivision fourteen of
43 section 220.00 of the penal law committed by a person fourteen [or],
44 fifteen, SIXTEEN OR SEVENTEEN years of age; or such conduct committed as
45 a sexually motivated felony, where authorized pursuant to section 130.91
46 of the penal law; (v) defined in section 120.05 (assault in the second
47 degree) or 160.10 (robbery in the second degree) of the penal law
48 committed by a person fourteen [or], fifteen, SIXTEEN OR SEVENTEEN years
49 of age but only where there has been a prior finding by a court that
50 such person has previously committed an act which, if committed by an
51 adult, would be the crime of assault in the second degree, robbery in
52 the second degree or any designated felony act specified in paragraph
53 (i), (ii), or (iii) of this subdivision regardless of the age of such
54 person at the time of the commission of the prior act; or (vi) other
55 than a misdemeanor committed by a person at least seven but less than

1 [sixteen] EIGHTEEN years of age, but only where there has been two prior
2 findings by the court that such person has committed a prior felony.

3 14. Any reference in this article to "CRIME" OR the commission of a
4 crime includes any act which, if done by an adult, would constitute a
5 crime, AND ANY ACT COMMITTED BY A YOUTH AGED SIXTEEN OR SEVENTEEN WHICH,
6 IF DONE BY AN ADULT, WOULD CONSTITUTE AN OFFENSE AS DEFINED IN SUBDIVI-
7 SION ONE OF SECTION 10.00 OF THE PENAL LAW.

8 S 21. Subdivisions 1 and 2 of section 305.1 of the family court act,
9 as added by chapter 920 of the laws of 1982, are amended to read as
10 follows:

11 1. A private person may take a child under the age of [sixteen] EIGH-
12 TEEN into custody in cases in which he may arrest an adult for a crime
13 under section 140.30 of the criminal procedure law.

14 2. Before taking such child under the age of [sixteen] EIGHTEEN into
15 custody, a private person must inform the child of the cause thereof and
16 require him to submit, except when he is taken into custody on pursuit
17 immediately after the commission of a crime.

18 S 22. Subdivision 2 of section 305.2 of the family court act, as added
19 by chapter 920 of the laws of 1982, is amended to read as follows:

20 2. An officer may take a child under the age of [sixteen] EIGHTEEN
21 into custody without a warrant in cases in which he may arrest a person
22 for a crime under article one hundred forty of the criminal procedure
23 law.

24 S 23. Paragraph (c) of subdivision 3 of section 311.1 of the family
25 court act, as added by chapter 920 of the laws of 1982, is amended to
26 read as follows:

27 (c) the fact that the respondent is a person under [sixteen] EIGHTEEN
28 years of age at the time of the alleged act or acts;

29 S 24. Subdivision 1 of section 352.2 of the family court act, as added
30 by chapter 920 of the laws of 1982, is amended to read as follows:

31 1. Upon the conclusion of the dispositional hearing, the court shall
32 enter an order of disposition:

33 (a) conditionally discharging the respondent in accord with section
34 353.1; or

35 (b) putting the respondent on probation in accord with section 353.2;
36 or

37 (c) continuing the proceeding and placing the respondent in accord
38 with section 353.3; or

39 (d) placing the respondent in accord with section 353.4; or

40 (e) continuing the proceeding and placing the respondent under a
41 restrictive placement in accord with section 353.5; OR

42 (F) WHERE APPLICABLE, IN ACCORD WITH SECTION 353.7.

43 S 25. The family court act is amended by adding a new section 353.7 to
44 read as follows:

45 S 353.7. DISPOSITIONS FOR CERTAIN OFFENSES COMMITTED BY YOUTHS AGE
46 SIXTEEN OR SEVENTEEN. 1. IF A RESPONDENT AGE SIXTEEN OR SEVENTEEN AT THE
47 TIME OF SUCH ACT IS FOUND TO HAVE COMMITTED AN OFFENSE THAT IS LAWFULLY
48 CLASSIFIED AS A VIOLATION OR TRAFFIC INFRACTION, THE COURT MAY ORDER THE
49 RESPONDENT TO PAY ANY FINE AND/OR SURCHARGE AUTHORIZED FOR SUCH AN
50 OFFENSE COMMITTED BY AN ADULT, AND/OR ORDER AN UNCONDITIONAL DISCHARGE
51 OR CONDITIONAL DISCHARGE IN ACCORDANCE WITH SECTION 353.1 OF THIS PART.

52 2. IF A RESPONDENT AGE SIXTEEN OR SEVENTEEN AT THE TIME OF SUCH ACT IS
53 FOUND TO HAVE COMMITTED AN OFFENSE THAT IS LAWFULLY CLASSIFIED AS A
54 MISDEMEANOR, THE COURT MAY, IN ADDITION TO ANY OTHER DISPOSITION AUTHOR-
55 IZED BY LAW, ORDER THE RESPONDENT TO PAY ANY FINE AND/OR SURCHARGE
56 AUTHORIZED FOR SUCH AN OFFENSE COMMITTED BY AN ADULT.

1 3. IF A RESPONDENT AGE SIXTEEN OR SEVENTEEN AT THE TIME OF SUCH ACT IS
2 FOUND TO HAVE COMMITTED AN OFFENSE THAT IS LAWFULLY CLASSIFIED AS A
3 FELONY, THE COURT MAY, IN ADDITION TO ANY OTHER DISPOSITION AUTHORIZED
4 BY LAW, ORDER THE RESPONDENT TO PAY ANY FINE AND/OR SURCHARGE AUTHORIZED
5 BY LAW FOR SUCH AN OFFENSE COMMITTED BY AN ADULT.

6 4. IF A RESPONDENT AGE SIXTEEN OR SEVENTEEN AT THE TIME OF SUCH ACT IS
7 FOUND TO HAVE COMMITTED A TRAFFIC INFRACTION, VIOLATION, MISDEMEANOR OR
8 FELONY PROHIBITED BY THE VEHICLE AND TRAFFIC LAW, THE COURT MAY TAKE ANY
9 ACTION WITH RESPECT TO SUCH PERSON'S DRIVER'S LICENSE OR DRIVING PRIVI-
10 LEGE AS IS AUTHORIZED BY LAW FOR SUCH A VIOLATION COMMITTED BY AN ADULT.

11 5. FOR PURPOSES OF THIS SECTION, "OFFENSE" SHALL HAVE THE SAME MEANING
12 AS IN SUBDIVISION ONE OF SECTION 10.00 OF THE PENAL LAW.

13 S 26. Subdivision 18 of section 10.00 of the penal law, as amended by
14 chapter 7 of the laws of 2007, is amended to read as follows:

15 18. "Juvenile offender" means, WHERE PROSECUTION IS AUTHORIZED BY LAW,
16 INCLUDING BUT NOT LIMITED TO SECTION 726.05 OF THE CRIMINAL PROCEDURE
17 LAW AND SECTION 325.5 OF THE FAMILY COURT ACT: (1) a person thirteen
18 years old who is criminally responsible for acts constituting murder in
19 the second degree as defined in subdivisions one and two of section
20 125.25 of this chapter or such conduct as a sexually motivated felony,
21 where authorized pursuant to section 130.91 [of the penal law]; and

22 (2) a person fourteen [or], fifteen, SIXTEEN OR SEVENTEEN years old
23 who is criminally responsible for acts constituting the crimes defined
24 in subdivisions one and two of section 125.25 (murder in the second
25 degree) and in subdivision three of such section provided that the
26 underlying crime for the murder charge is one for which such person is
27 criminally responsible; section 135.25 (kidnapping in the first degree);
28 150.20 (arson in the first degree); subdivisions one and two of section
29 120.10 (assault in the first degree); 125.20 (manslaughter in the first
30 degree); subdivisions one and two of section 130.35 (rape in the first
31 degree); subdivisions one and two of section 130.50 (criminal sexual act
32 in the first degree); 130.70 (aggravated sexual abuse in the first
33 degree); 140.30 (burglary in the first degree); subdivision one of
34 section 140.25 (burglary in the second degree); 150.15 (arson in the
35 second degree); 160.15 (robbery in the first degree); subdivision two of
36 section 160.10 (robbery in the second degree) of this chapter; or
37 section 265.03 of this chapter, where such machine gun or such firearm
38 is possessed on school grounds, as that phrase is defined in subdivision
39 fourteen of section 220.00 of this chapter; or defined in this chapter
40 as an attempt to commit murder in the second degree or kidnapping in the
41 first degree, or such conduct as a sexually motivated felony, where
42 authorized pursuant to section 130.91 [of the penal law].

43 S 27. Subdivisions 1 and 2 of section 30.00 of the penal law, subdivi-
44 sion 1 as amended by chapter 481 of the laws of 1978 and subdivision 2
45 as amended by chapter 7 of the laws of 2007, are amended to read as
46 follows:

47 1. Except as provided in subdivision two of this section, a person
48 less than [sixteen] EIGHTEEN years old is not criminally responsible for
49 conduct.

50 2. (A) A person thirteen, fourteen [or], fifteen, SIXTEEN OR SEVENTEEN
51 years of age is criminally responsible for acts constituting murder in
52 the second degree as defined in subdivisions one and two of section
53 125.25 and in subdivision three of such section provided that the under-
54 lying crime for the murder charge is one for which such person is crimi-
55 nally responsible or for such conduct as a sexually motivated felony,
56 where authorized pursuant to section 130.91 [of the penal law], EXCEPT

1 THAT, IN THE CASE OF A PERSON THIRTEEN, FOURTEEN OR FIFTEEN YEARS OF
2 AGE, THE PERSON IS ONLY CRIMINALLY RESPONSIBLE PURSUANT TO THIS PARA-
3 GRAPH IF SUCH ACTION AGAINST HIM OR HER WAS ORDERED REMOVED FROM A FAMI-
4 LY COURT TO A SUPERIOR CRIMINAL COURT PURSUANT TO SECTION 325.5 OF THE
5 FAMILY COURT ACT AND SECTION 726.05 OF THE CRIMINAL PROCEDURE LAW; and
6 (B) a person fourteen [or], fifteen, SIXTEEN OR SEVENTEEN years of age
7 is criminally responsible for acts constituting the crimes defined in
8 section 135.25 (kidnapping in the first degree); 150.20 (arson in the
9 first degree); subdivisions one and two of section 120.10 (assault in
10 the first degree); 125.20 (manslaughter in the first degree); subdivi-
11 sions one and two of section 130.35 (rape in the first degree); subdivi-
12 sions one and two of section 130.50 (criminal sexual act in the first
13 degree); 130.70 (aggravated sexual abuse in the first degree); 140.30
14 (burglary in the first degree); subdivision one of section 140.25
15 (burglary in the second degree); 150.15 (arson in the second degree);
16 160.15 (robbery in the first degree); subdivision two of section 160.10
17 (robbery in the second degree) of this chapter; or section 265.03 of
18 this chapter, where such machine gun or such firearm is possessed on
19 school grounds, as that phrase is defined in subdivision fourteen of
20 section 220.00 of this chapter; or defined in this chapter as an attempt
21 to commit murder in the second degree or kidnapping in the first degree,
22 or for such conduct as a sexually motivated felony, where authorized
23 pursuant to section 130.91 [of the penal law], EXCEPT THAT, IN THE CASE
24 OF A PERSON FOURTEEN OR FIFTEEN YEARS OF AGE, THE PERSON IS ONLY CRIMI-
25 NALLY RESPONSIBLE PURSUANT TO THIS PARAGRAPH IF SUCH ACTION AGAINST HIM
26 OR HER WAS ORDERED REMOVED FROM A FAMILY COURT TO A SUPERIOR CRIMINAL
27 COURT PURSUANT TO SECTION 325.5 OF THE FAMILY COURT ACT AND SECTION
28 726.05 OF THE CRIMINAL PROCEDURE LAW.

29 S 28. Subdivision 2 of section 60.10 of the penal law, as amended by
30 chapter 411 of the laws of 1979, is amended to read as follows:

31 2. Subdivision one of this section shall apply when sentencing a juve-
32 nile offender notwithstanding the provisions of any other law that deals
33 with the authorized sentence for persons who are not juvenile offenders.
34 Provided, however, that the limitation prescribed by this section shall
35 not be deemed or construed to bar use of a conviction of a juvenile
36 offender, other than a juvenile offender who has been adjudicated a
37 youthful offender pursuant to section 720.20 of the criminal procedure
38 law, as a previous or predicate felony offender under section 70.04,
39 70.06, 70.08 or 70.10, when sentencing a person who commits a felony
40 after he has reached the age of [sixteen] EIGHTEEN.

41 S 29. Paragraph (a) of subdivision 3 of section 70.05 of the penal
42 law, as amended by chapter 174 of the laws of 2003, is amended to read
43 as follows:

44 (a) For the class A felony of murder in the second degree, the minimum
45 period of imprisonment shall be fixed by the court and shall be not less
46 than five years but shall not exceed nine years provided, however, that
47 where the sentence is for an offense specified in subdivision one or two
48 of section 125.25 of this chapter and the defendant was fourteen [or],
49 fifteen, SIXTEEN OR SEVENTEEN years old at the time of such offense, the
50 minimum period of imprisonment shall be not less than seven and one-half
51 years but shall not exceed fifteen years;

52 S 30. Paragraph (f) of subdivision 1 of section 70.30 of the penal
53 law, as added by chapter 481 of the laws of 1978 and as relettered by
54 chapter 3 of the laws of 1995, is amended to read as follows:

55 (f) The aggregate maximum term of consecutive sentences imposed upon a
56 juvenile offender for two or more crimes, not including a class A felo-

1 ny, committed before he has reached the age of [sixteen] EIGHTEEN,
2 shall, if it exceeds ten years, be deemed to be ten years. If consec-
3 utive indeterminate sentences imposed upon a juvenile offender include a
4 sentence for the class A felony of arson in the first degree or for the
5 class A felony of kidnapping in the first degree, then the aggregate
6 maximum term of such sentences shall, if it exceeds fifteen years, be
7 deemed to be fifteen years. Where the aggregate maximum term of two or
8 more consecutive sentences is reduced by a calculation made pursuant to
9 this paragraph, the aggregate minimum period of imprisonment, if it
10 exceeds one-half of the aggregate maximum term as so reduced, shall be
11 deemed to be one-half of the aggregate maximum term as so reduced.

12 S 31. Paragraph (d) of subdivision 1 of section 70.30 of the penal
13 law, as added by chapter 481 of the laws of 1978, is amended to read as
14 follows:

15 (d) The aggregate maximum term of consecutive sentences imposed upon a
16 juvenile offender for two or more crimes, not including a class A felo-
17 ny, committed before he has reached the age of [sixteen] EIGHTEEN,
18 shall, if it exceeds ten years, be deemed to be ten years. If consec-
19 utive indeterminate sentences imposed upon a juvenile offender include a
20 sentence for the class A felony of arson in the first degree or for the
21 class A felony of kidnapping in the first degree, then the aggregate
22 maximum term of such sentences shall, if it exceeds fifteen years, be
23 deemed to be fifteen years. Where the aggregate maximum term of two or
24 more consecutive sentences is reduced by a calculation made pursuant to
25 this paragraph, the aggregate minimum period of imprisonment, if it
26 exceeds one-half of the aggregate maximum term as so reduced, shall be
27 deemed to be one-half of the aggregate maximum term as so reduced.

28 S 32. Severability. If any clause, sentence, paragraph, subdivision or
29 part of this act, or the application thereof to any person or circum-
30 stance, shall be adjudged by any court of competent jurisdiction to be
31 invalid or unconstitutional, such judgment shall not affect, impair or
32 invalidate the remainder thereof, but shall be confined in its operation
33 to the clause, sentence, paragraph, subdivision or part of this act, or
34 in its application to the person or circumstance, directly involved in
35 the controversy in which such judgment shall have been rendered.

36 S 33. This act shall take effect 18 months after it shall have become
37 a law; provided, however, that the amendments to paragraph (f) of subdi-
38 vision 1 of section 70.30 of the penal law made by section thirty of
39 this act shall be subject to the expiration and reversion of such para-
40 graph pursuant to subdivision d of section 74 of chapter 3 of the laws
41 of 1995, as amended, when upon such date the provisions of section thir-
42 ty-one of this act shall take effect.