S T A T E O F N E W Y O R K

7519

I N S E N A T E

May 6, 2016

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, in relation to a motion to remove a juvenile offender to family court

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

Section 1. Subdivision 1 of section 210.43 of the criminal procedure law, as added by chapter 411 of the laws of 1979, paragraph (b) as amended by chapter 264 of the laws of 2003, is amended to read as follows:

1. After a motion by a juvenile offender, pursuant to subdivision five of section 180.75 of this chapter, or after arraignment of a juvenile offender upon an indictment, the superior court may, on motion of any party or on its own motion:

(a) except as otherwise provided by paragraph (b) OF THIS SUBDIVISION, order removal of the action to the family court pursuant to the provisions of article seven hundred twenty-five of this chapter, if, after consideration of the factors set forth in subdivision two of this section, the court determines that to do so would be in the interests of justice. PROVIDED, HOWEVER, THAT A SUPERIOR COURT SHALL BE REQUIRED TO ORDER REMOVAL OF AN ACTION AGAINST A JUVENILE OFFENDER ACCUSED OF ROBBERY IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 160.10 OF THE PENAL LAW, UNLESS THE DISTRICT ATTORNEY PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE YOUTH PLACED A PRIMARY ROLE IN COMMISSION OF THE CRIME OR THAT AGGRAVATING CIRCUMSTANCES SET FORTH IN THE MEMORANDUM IN OPPOSITION SUBMITTED BY THE DISTRICT ATTORNEY THAT BEAR DIRECTLY ON THE MANNER IN WHICH THE CRIME WAS COMMITTED ARE PRESENT; or

(b) [with the consent] AFTER CONSIDERATION OF THE RECOMMENDATION of the district attorney, order removal of an action involving an indictment charging a juvenile offender with murder in the second degree as defined in section 125.25 of the penal law; rape in the first degree, as defined in subdivision one of section 130.35 of the penal law; criminal sexual act in the first degree, as defined in subdivision one of section

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

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130.50 of the penal law; or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20 OF THIS CHAPTER, to the family court pursuant to the provisions of article seven hundred twenty-five of this chapter if the court finds one or more of the following factors: (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, and, after consideration of the factors set forth in subdivision two of this section, the court determined that removal of the action to the family court would be in the interests of justice.

S 2. This act shall take effect immediately.