

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:

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

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

9 (a) except as otherwise provided by paragraph (b) OF THIS SUBDIVISION,
10 order removal of the action to the family court pursuant to the
11 provisions of article seven hundred twenty-five of this chapter, if,
12 after consideration of the factors set forth in subdivision two of this
13 section, the court determines that to do so would be in the interests of
14 justice. PROVIDED, HOWEVER, THAT A SUPERIOR COURT SHALL BE REQUIRED TO
15 ORDER REMOVAL OF AN ACTION AGAINST A JUVENILE OFFENDER ACCUSED OF
16 ROBBERY IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION
17 160.10 OF THE PENAL LAW, UNLESS THE DISTRICT ATTORNEY PROVES BY A
18 PREPONDERANCE OF THE EVIDENCE THAT THE YOUTH PLACED A PRIMARY ROLE IN
19 COMMISSION OF THE CRIME OR THAT AGGRAVATING CIRCUMSTANCES SET FORTH IN
20 THE MEMORANDUM IN OPPOSITION SUBMITTED BY THE DISTRICT ATTORNEY THAT
21 BEAR DIRECTLY ON THE MANNER IN WHICH THE CRIME WAS COMMITTED ARE
22 PRESENT; or

23 (b) [with the consent] AFTER CONSIDERATION OF THE RECOMMENDATION of
24 the district attorney, order removal of an action involving an indictment
25 charging a juvenile offender with murder in the second degree as
26 defined in section 125.25 of the penal law; rape in the first degree, as
27 defined in subdivision one of section 130.35 of the penal law; criminal
28 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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1 130.50 of the penal law; or an armed felony as defined in paragraph (a)
2 of subdivision forty-one of section 1.20 OF THIS CHAPTER, to the family
3 court pursuant to the provisions of article seven hundred twenty-five of
4 this chapter if the court finds one or more of the following factors:
5 (i) mitigating circumstances that bear directly upon the manner in which
6 the crime was committed; (ii) where the defendant was not the sole
7 participant in the crime, the defendant's participation was relatively
8 minor although not so minor as to constitute a defense to the prose-
9 cution; or (iii) possible deficiencies in the proof of the crime, and,
10 after consideration of the factors set forth in subdivision two of this
11 section, the court determined that removal of the action to the family
12 court would be in the interests of justice.

13 S 2. This act shall take effect immediately.