STATE OF NEW YORK

4935

2017-2018 Regular Sessions

IN ASSEMBLY

February 6, 2017

Introduced by M. of A. LENTOL, WEINSTEIN, AUBRY, HEVESI, RODRIGUEZ, LUPARDO, ZEBROWSKI, SEPULVEDA, PICHARDO, ABINANTI -- Multi-Sponsored by -- M. of A. HARRIS, MAYER, SOLAGES -- read once and referred 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:

Section 1. Subdivision 42 of section 1.20 of the criminal procedure law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

42. "Juvenile offender" means**, where prosecution is authorized by law, including but not limited to section 726.05 of this chapter and section 325.5 of the family court act:** (1) a person, thirteen years old who is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 of the penal law, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; and (2) a person fourteen [~~or~~]**,** fifteen**, sixteen, or seventeen** years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary

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

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in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law; or defined in the penal law as an attempt to commit murder in the second degree or kidnapping in the first degree, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law.

§ 2. Paragraphs (a) and (b) of subdivision 3 and subdivision 5 of section 180.75 of the criminal procedure law, paragraph (a) of subdivision 3 as added by chapter 481 of the laws of 1978, paragraph (b) of subdivision 3 as amended by chapter 920 of the laws of 1982 and subdivision 5 as added by chapter 411 of the laws of 1979, are amended to read as follows:

(a) If there is reasonable cause to believe that the defendant committed a crime for which a person under the age of [~~sixteen~~] **eighteen** is criminally responsible, the court must order that the defendant be held for the action of a grand jury of the appropriate superior court, and it must promptly transmit to such superior court the order, the felony complaint, the supporting depositions and all other pertinent documents. Until such papers are received by the superior court, the action is deemed to be still pending in the local criminal court; or

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

5. Notwithstanding the provisions of subdivision two, three, or four, if a currently undetermined felony complaint against a juvenile offender is pending in a local criminal court, and the defendant has not waived a hearing pursuant to subdivision two and a hearing pursuant to subdivision three has not commenced, the defendant may move in the superior court which would exercise the trial jurisdiction of the offense or offenses charged were an indictment therefor to result, to remove the action to family court. The procedural rules of subdivisions one and two of section 210.45 of this chapter are applicable to a motion pursuant to this subdivision. Upon such motion, the superior court shall be authorized to sit as a local criminal court to exercise the preliminary jurisdiction specified in subdivisions two and three of this section, and shall proceed and determine the motion as provided in section 210.43 of this chapter[~~; provided, however, that the exception provisions of paragraph (b) of subdivision one of such section 210.43 shall not apply when there is not reasonable cause to believe that the juvenile offender committed one or more of the crimes enumerated therein, and in such event the provisions of paragraph (a) thereof shall apply~~].

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

(a) Except as provided in subdivision six of section 200.20 of this chapter, a grand jury may not indict (i) a person thirteen years of age

for any conduct or crime other than conduct constituting a crime defined in subdivisions one and two of section 125.25 (murder in the second degree) or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) a person fourteen [~~or~~], fifteen, sixteen or seventeen years of age for any conduct or crime other than conduct constituting a crime defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; [~~subdivision four of section 265.02 of the penal law, where such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law;~~] or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law; or defined in the penal law as an attempt to commit murder in the second degree or kidnapping in the first degree, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law.

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

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

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

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

(a) the offense for which the defendant is criminally responsible and the one or more other offenses for which he would not have been criminally responsible by reason of infancy are based upon the same act or

upon the same criminal transaction, as that term is defined in subdivision two of section 40.10 of this chapter; or

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

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

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

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

(b) [~~with the consent 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 130.50 of the penal law; or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20, 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.

§ 7. Subparagraphs (i), (iii) and the second undesignated paragraph of paragraph (g) of subdivision 5 of section 220.10 of the criminal procedure law, subparagraph (i) as amended by chapter 410 of the laws of 1979, subparagraph (iii) as amended by chapter 264 of the laws of 2003 and the second undesignated paragraph as amended by chapter 920 of the laws of 1982, are amended to read as follows:

(i) If the indictment charges a person fourteen [~~or~~] fifteen**, sixteen or seventeen** years old with the crime of murder in the second degree any plea of guilty entered pursuant to subdivision three or four must be a plea of guilty of a crime for which the defendant is criminally responsible;

(iii) Where the indictment does not charge a crime specified in subparagraph (i) of this paragraph, the district attorney may recommend removal of the action to the family court. Upon making such recommendation the district attorney shall submit a subscribed memorandum setting forth: (1) a recommendation that the interests of justice would best be served by removal of the action to the family court; and (2) if the indictment charges a thirteen year old with the crime of murder in the second degree, or a fourteen [~~or~~]**,** fifteen**, sixteen or seventeen** year

old with the crimes of rape in the first degree as defined in subdivision one of section 130.35 of the penal law, or criminal sexual act in the first degree as defined in subdivision one of section 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 specific factors, one or more of which reasonably supports the recommendation, showing, (i) mitigating circumstances that bear directly upon the manner in which the crime was committed, or (ii) where the defendant was not the sole participant in the crime, that the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution, or (iii) possible deficiencies in proof of the crime, or (iv) where the juvenile offender has no previous adjudications of having committed a designated felony act, as defined in subdivision eight of section 301.2 of the family court act, regardless of the age of the offender at the time of commission of the act, that the criminal act was not part of a pattern of criminal behavior and, in view of the history of the offender, is not likely to be repeated.

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

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

5. Where the indictment charges a crime committed by the defendant while he **or she** was under the age of [~~sixteen~~] **eighteen** but a lesser included offense would be one for which the defendant is not criminally responsible by reason of infancy, such lessor included offense may nevertheless be submitted to the jury in the same manner as an offense for which the defendant would be criminally responsible notwithstanding the fact that a verdict of guilty would not result in a criminal conviction.

§ 9. Section 330.25 of the criminal procedure law, as added by chapter 481 of the laws of 1978, and subdivision 2 as amended by chapter 920 of the laws of 1982, is amended to read as follows:

§ 330.25 Removal after verdict.

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

2. [~~If the district attorney consents to the motion for removal pursuant to this section, he shall file a subscribed memorandum with the court setting forth (1) a recommendation that~~] **In determining the motion, the court shall consider: (1) whether** the interests of justice would best be served by removal of the action to the family court; and (2) if the conviction is of an offense set forth in paragraph (b) of subdivision one of section 210.43 of this chapter, **whether** specific factors **exist**, one or more of which reasonably [~~support~~] **supports** the [~~recommendation~~] **motion**, showing, (i) mitigating circumstances that bear directly upon the manner in which the crime was committed, or (ii) where

the defendant was not the sole participant in the crime, that the defendant's participation was relatively minor although not so minor as to constitute a defense to prosecution, or (iii) where the juvenile offender has no previous adjudications of having committed a designated felony act, as defined in subdivision eight of section 301.2 of the family court act, regardless of the age of the offender at the time of commission of the act, that the criminal act was not part of a pattern of criminal behavior and, in view of the history of the offender, is not likely to be repeated.

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

§ 10. Section 510.15 of the criminal procedure law, as amended by chapter 411 of the laws of 1979, subdivision 1 as designated and subdivision 2 as added by chapter 359 of the laws of 1980, is amended to read as follows:

§ 510.15 Commitment of principal under [~~sixteen~~] **eighteen**.

1. When a principal who is under the age of [~~sixteen~~] **eighteen** is committed to the custody of the sheriff the court must direct that the principal be taken to and lodged in a place certified by the state [~~division for youth~~] **office of children and family services** as a juvenile detention facility for the reception of children. Where such a direction is made the sheriff shall deliver the principal in accordance therewith and such person shall although lodged and cared for in a juvenile detention facility continue to be deemed to be in the custody of the sheriff. No principal under the age of [~~sixteen~~] **eighteen** to whom the provisions of this section may apply shall be detained in any prison, jail, lockup, or other place used for adults convicted of a crime or under arrest and charged with the commission of a crime without the approval of the state [~~division for youth~~] **office of children and family services** in the case of each principal and the statement of its reasons therefor. The sheriff shall not be liable for any acts done to or by such principal resulting from negligence in the detention of and care for such principal, when the principal is not in the actual custody of the sheriff.

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

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

1. "Youth" means a person charged with a crime alleged to have been committed when he was at least [~~sixteen~~] eighteen years old and less than [~~nineteen~~] twenty years old or a person charged with being a juvenile offender as defined in subdivision forty-two of section 1.20 of this chapter.

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

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

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

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

ARTICLE 726

REMOVAL OF PROCEEDINGS AGAINST AN ALLEGED JUVENILE DELINQUENT FROM FAMILY COURT TO A SUPERIOR COURT

Section 726.00 Applicability.

726.05 Filing of order of removal and proceedings thereon.

§ 726.00 Applicability.

The provisions of this article apply in any case where a court directs that an action or charge brought by a juvenile delinquency petition, pursuant to article three of the family court act, against a juvenile offender who was thirteen, fourteen or fifteen years old at the time of such offense, is to be removed from family court to a superior criminal court pursuant to section 325.5 of the family court act.

§ 726.05 Filing of order of removal and proceedings thereon.

1. When a family court directs that an action or charge brought against a juvenile offender by a juvenile delinquency petition pursuant to article three of the family court act be removed from family court to a superior criminal court pursuant to section 325.5 of the family court act, the district attorney who requested such removal shall promptly file such removal order and the appropriate charging documents with the superior criminal court that would exercise trial jurisdiction over such offense or offenses were an indictment therefor to result.

2. Following the granting of such an order of removal, the juvenile shall be brought forthwith and with all reasonable speed before the appropriate superior criminal court for appropriate proceedings. For purposes of this section, a judge or justice of a superior court shall preside over such proceedings as such a judge or justice of the superior criminal court, or as a local criminal court, as appropriate.

3. The superior criminal court must assume jurisdiction and proceed as the circumstances require, in the manner and to the extent provided by law.

4. Upon the filing of an order of removal in the superior criminal court, the family court article three action upon which the order is based shall be terminated and there shall be no further proceedings in the family court with respect to the offense, unless such action is removed back to the family court in accordance with the provisions of article seven hundred twenty-five of this chapter. All further proceedings including motions and appeals shall be in accordance with laws appertaining to the criminal court and for this purpose all findings, determinations, verdicts and orders, other than the order of

removal, shall be deemed to have been made by the superior criminal court.

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

§ 507-d. Confinement of juvenile delinquents under sentence of the courts of the United States. The directors of secure and limited secure facilities shall receive and safely keep in such facilities, subject to the provisions of this article, any person not over the age of [~~sixteen~~] **eighteen** years convicted of any offense against the United States, and sentenced to imprisonment by any court of the United States, sitting within this state, until such sentences be executed, or until such delinquent shall be discharged by due course of law, conditioned upon the United States supporting such delinquent and paying the expenses attendant upon the execution of such sentence.

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

(1) temporary care, maintenance and supervision provided alleged juvenile delinquents and persons in need of supervision in detention facilities certified pursuant to sections seven hundred twenty and 305.2 of the family court act by the office of children and family services, pending adjudication of alleged delinquency or alleged need of supervision by the family court, or pending transfer to institutions to which committed or placed by such court or while awaiting disposition by such court after adjudication or held pursuant to a securing order of a criminal court if the person named therein as principal is under [~~sixteen~~] **eighteen**; or,

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

(b) For every juvenile delinquency proceeding under article three involving an allegation of an act committed by a person which, if done by an adult, would be a crime (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 135.20 (kidnapping in the second degree), but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree); or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen [~~or~~]**,** fifteen**, sixteen or seventeen** years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by

a person fourteen [~~or~~], fifteen, sixteen or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen or fifteen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree or any designated felony act specified in clause (i), (ii) or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; or (vi) other than a misdemeanor, committed by a person at least seven but less than [~~sixteen~~] eighteen years of age, but only where there has been two prior findings by the court that such person has committed a prior act which, if committed by an adult would be a felony:

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

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

(iii) There is hereby established in the family court one or more "violation and traffic infraction parts". Such parts shall have jurisdiction, over any offense that is not a felony, or a misdemeanor under the penal law allegedly committed by a person sixteen or seventeen years of age. Nothing in this subparagraph shall prevent a judge presiding over a proceeding concerning such an offense, after notice and an opportunity for the parties to be heard, from transferring such proceeding to or consolidating such proceeding before another family court judge, in the same jurisdiction, before whom a related proceeding, involving the same respondent, is pending.

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

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

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

§ 325.5. Removal for proceedings in a superior court; certain alleged offenses by youths age thirteen, fourteen or fifteen. 1. (a) (i) Notwithstanding any inconsistent provision of part four of this article, at any time within ten days after the initial appearance with respect to a juvenile delinquency petition which alleges conduct that is also a juvenile offense, as defined in subdivision eighteen of section 10.00 of the penal law, and that is pending pursuant to this article against a youth who was thirteen, fourteen or fifteen years of age at the time of such alleged offense, if such respondent has not entered an admission to all such juvenile offense 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, the appropriate presentment agency shall, upon the written request of the district attorney having geographic jurisdiction over such alleged offense,

promptly serve and file, in the family court in which such petition is pending, a motion seeking to remove such juvenile offender count or counts to the superior criminal court that would exercise trial jurisdiction over such offense or offenses were an indictment therefor to 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.

(c) The order of removal must be signed by the judge of the family court who directed the removal.

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

1. "Juvenile delinquent" means a person over seven and less than [~~sixteen~~] **eighteen** years of age, who, having committed an act that would constitute a crime if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, [~~or~~] (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law**, or (c) could be, but is not, the defendant in an action against a sixteen or seventeen year old authorized by subdivision forty-two of section 1.20 of the criminal procedure law**.

8. "Designated felony act" means an act which, if done by an adult, would be a crime: (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law committed by a person thirteen, fourteen [~~or~~]**,** fifteen**, sixteen or seventeen** years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the second degree) but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree) or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen [~~or~~]**,** fifteen**, sixteen, or seventeen** years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen [~~or~~]**,** fifteen**, sixteen or seventeen** years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by a person fourteen [~~or~~]**,** fifteen**, sixteen or seventeen** years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen [~~or~~]**,** fifteen**, sixteen or seventeen** years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in

the second degree or any designated felony act specified in paragraph (i), (ii), or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; or (vi) other than a misdemeanor committed by a person at least seven but less than [~~sixteen~~] **eighteen** years of age, but only where there has been two prior findings by the court that such person has committed a prior felony.

14. Any reference in this article to **"crime" or** the commission of a crime includes any act which, if done by an adult, would constitute a crime**, and any act committed by a youth aged sixteen or seventeen which, if done by an adult, would constitute an offense as defined in subdivision one of section 10.00 of the penal law**.

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

1. A private person may take a child under the age of [~~sixteen~~] **eighteen** into custody in cases in which he may arrest an adult for a crime under section 140.30 of the criminal procedure law.

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

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

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

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

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

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

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

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

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

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

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

(e) continuing the proceeding and placing the respondent under a restrictive placement in accord with section 353.5**; or**

(f) where applicable, in accord with section 353.7.

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

§ 353.7. Dispositions for certain offenses committed by youths age sixteen or seventeen. 1. If a respondent age sixteen or seventeen at the time of such act is found to have committed an offense that is lawfully classified as a violation or traffic infraction, the court may order the respondent to pay any fine and/or surcharge authorized for such an offense committed by an adult, and/or order an unconditional discharge or conditional discharge in accordance with section 353.1 of this part.

2. If a respondent age sixteen or seventeen at the time of such act is found to have committed an offense that is lawfully classified as a misdemeanor, the court may, in addition to any other disposition authorized by law, order the respondent to pay any fine and/or surcharge authorized for such an offense committed by an adult.

3. If a respondent age sixteen or seventeen at the time of such act is found to have committed an offense that is lawfully classified as a felony, the court may, in addition to any other disposition authorized by law, order the respondent to pay any fine and/or surcharge authorized by law for such an offense committed by an adult.

4. If a respondent age sixteen or seventeen at the time of such act is found to have committed a traffic infraction, violation, misdemeanor or felony prohibited by the vehicle and traffic law, the court may take any action with respect to such person's driver's license or driving privilege as is authorized by law for such a violation committed by an adult.

5. For purposes of this section, "offense" shall have the same meaning as in subdivision one of section 10.00 of the penal law.

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

18. "Juvenile offender" means**, where prosecution is authorized by law, including but not limited to section 726.05 of the criminal procedure law and section 325.5 of the family court act:** (1) a person thirteen years old who is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 of this chapter or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 [~~of the penal law~~]; and

(2) a person fourteen [~~or~~]**,** fifteen**, sixteen or seventeen** years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; or section 265.03 of this chapter, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 [~~of the penal law~~].

§ 27. Subdivisions 1 and 2 of section 30.00 of the penal law, subdivision 1 as amended by chapter 481 of the laws of 1978 and subdivision 2 as amended by chapter 7 of the laws of 2007, are amended to read as follows:

1. Except as provided in subdivision two of this section, a person less than [~~sixteen~~] **eighteen** years old is not criminally responsible for conduct.

2. **(a)** A person thirteen, fourteen [~~or~~]**,** fifteen**, sixteen or seventeen** years of age is criminally responsible for acts constituting murder in

the second degree as defined in subdivisions one and two of section 125.25 and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 [~~of the penal law~~], except that, in the case of a person thirteen, fourteen or fifteen years of age, the person is only criminally responsible pursuant to this paragraph if such action against him or her was ordered removed from a family court to a superior criminal court pursuant to section 325.5 of the family court act and section 726.05 of the criminal procedure law; and (b) a person fourteen [~~or~~], fifteen, sixteen or seventeen years of age is criminally responsible for acts constituting the crimes defined in section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; or section 265.03 of this chapter, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree, or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 [~~of the penal law~~], except that, in the case of a person fourteen or fifteen years of age, the person is only criminally responsible pursuant to this paragraph if such action against him or her was ordered removed from a family court to a superior criminal court pursuant to section 325.5 of the family court act and section 726.05 of the criminal procedure law.

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

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

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

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

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

(f) The aggregate maximum term of consecutive sentences imposed upon a juvenile offender for two or more crimes, not including a class A felony, committed before he has reached the age of [~~sixteen~~] **eighteen**, shall, if it exceeds ten years, be deemed to be ten years. If consecutive indeterminate sentences imposed upon a juvenile offender include a sentence for the class A felony of arson in the first degree or for the class A felony of kidnapping in the first degree, then the aggregate maximum term of such sentences shall, if it exceeds fifteen years, be deemed to be fifteen years. Where the aggregate maximum term of two or more consecutive sentences is reduced by a calculation made pursuant to this paragraph, the aggregate minimum period of imprisonment, if it exceeds one-half of the aggregate maximum term as so reduced, shall be deemed to be one-half of the aggregate maximum term as so reduced.

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

(d) The aggregate maximum term of consecutive sentences imposed upon a juvenile offender for two or more crimes, not including a class A felony, committed before he has reached the age of [~~sixteen~~] **eighteen**, shall, if it exceeds ten years, be deemed to be ten years. If consecutive indeterminate sentences imposed upon a juvenile offender include a sentence for the class A felony of arson in the first degree or for the class A felony of kidnapping in the first degree, then the aggregate maximum term of such sentences shall, if it exceeds fifteen years, be deemed to be fifteen years. Where the aggregate maximum term of two or more consecutive sentences is reduced by a calculation made pursuant to this paragraph, the aggregate minimum period of imprisonment, if it exceeds one-half of the aggregate maximum term as so reduced, shall be deemed to be one-half of the aggregate maximum term as so reduced.

§ 32. Severability. If any clause, sentence, paragraph, subdivision or part of this act, or the application thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the reminder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this act, or in its application to the person or circumstance, directly involved in the controversy in which such judgment shall have been rendered.

§ 33. This act shall take effect 18 months after it shall have become a law; provided, however, that the amendments to paragraph (f) of subdivision 1 of section 70.30 of the penal law made by section thirty of this act shall be subject to the expiration and reversion of such paragraph pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section thirty-one of this act shall take effect.