

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:

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

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

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

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

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

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

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

51 § 3. Subdivisions (a), (b) and (c) of section 190.71 of the criminal
52 procedure law, subdivision (a) as amended by chapter 7 of the laws of
53 2007 and subdivisions (b) and (c) as added by chapter 481 of the laws of
54 1978, are amended to read as follows:

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

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

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

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

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

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

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

1 upon the same criminal transaction, as that term is defined in subdivi-
2 sion two of section 40.10 of this chapter; or

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

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

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

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

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

38 § 7. Subparagraphs (i), (iii) and the second undesignated paragraph of
39 paragraph (g) of subdivision 5 of section 220.10 of the criminal proce-
40 dure law, subparagraph (i) as amended by chapter 410 of the laws of
41 1979, subparagraph (iii) as amended by chapter 264 of the laws of 2003
42 and the second undesignated paragraph as amended by chapter 920 of the
43 laws of 1982, are amended to read as follows:

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

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

1 old with the crimes of rape in the first degree as defined in subdivi-
2 sion one of section 130.35 of the penal law, or criminal sexual act in
3 the first degree as defined in subdivision one of section 130.50 of the
4 penal law, or an armed felony as defined in paragraph (a) of subdivision
5 forty-one of section 1.20 of this chapter specific factors, one or more
6 of which reasonably supports the recommendation, showing, (i) mitigating
7 circumstances that bear directly upon the manner in which the crime was
8 committed, or (ii) where the defendant was not the sole participant in
9 the crime, that the defendant's participation was relatively minor
10 although not so minor as to constitute a defense to the prosecution, or
11 (iii) possible deficiencies in proof of the crime, or (iv) where the
12 juvenile offender has no previous adjudications of having committed a
13 designated felony act, as defined in subdivision eight of section 301.2
14 of the family court act, regardless of the age of the offender at the
15 time of commission of the act, that the criminal act was not part of a
16 pattern of criminal behavior and, in view of the history of the offen-
17 der, is not likely to be repeated.

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

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

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

38 § 9. Section 330.25 of the criminal procedure law, as added by chapter
39 481 of the laws of 1978, and subdivision 2 as amended by chapter 920 of
40 the laws of 1982, is amended to read as follows:

41 § 330.25 Removal after verdict.

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

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

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

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

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

29 § 510.15 Commitment of principal under [~~sixteen~~] eighteen.

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

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

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

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

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

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

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

15 § 14. The criminal procedure law is amended by adding a new article
16 726 to read as follows:

17 ARTICLE 726

18 REMOVAL OF PROCEEDINGS AGAINST AN ALLEGED

19 JUVENILE DELINQUENT FROM FAMILY COURT TO A SUPERIOR COURT

20 Section 726.00 Applicability.

21 726.05 Filing of order of removal and proceedings thereon.

22 § 726.00 Applicability.

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

29 § 726.05 Filing of order of removal and proceedings thereon.

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

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

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

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

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

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

5 § 507-d. Confinement of juvenile delinquents under sentence of the
6 courts of the United States. The directors of secure and limited secure
7 facilities shall receive and safely keep in such facilities, subject to
8 the provisions of this article, any person not over the age of [~~sixteen~~]
9 eighteen years convicted of any offense against the United States, and
10 sentenced to imprisonment by any court of the United States, sitting
11 within this state, until such sentences be executed, or until such
12 delinquent shall be discharged by due course of law, conditioned upon
13 the United States supporting such delinquent and paying the expenses
14 attendant upon the execution of such sentence.

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

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

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

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

1 a person fourteen [~~or~~], fifteen, sixteen or seventeen years of age; or
2 such conduct committed as a sexually motivated felony, where authorized
3 pursuant to section 130.91 of the penal law; (v) defined in section
4 120.05 (assault in the second degree) or 160.10 (robbery in the second
5 degree) of the penal law committed by a person fourteen or fifteen years
6 of age but only where there has been a prior finding by a court that
7 such person has previously committed an act which, if committed by an
8 adult, would be the crime of assault in the second degree, robbery in
9 the second degree or any designated felony act specified in clause (i),
10 (ii) or (iii) of this subdivision regardless of the age of such person
11 at the time of the commission of the prior act; or (vi) other than a
12 misdemeanor, committed by a person at least seven but less than
13 [~~sixteen~~] eighteen years of age, but only where there has been two prior
14 findings by the court that such person has committed a prior act which,
15 if committed by an adult would be a felony:

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

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

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

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

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

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

42 § 325.5. Removal for proceedings in a superior court; certain alleged
43 offenses by youths age thirteen, fourteen or fifteen. 1. (a) (i)
44 Notwithstanding any inconsistent provision of part four of this article,
45 at any time within ten days after the initial appearance with respect to
46 a juvenile delinquency petition which alleges conduct that is also a
47 juvenile offense, as defined in subdivision eighteen of section 10.00 of
48 the penal law, and that is pending pursuant to this article against a
49 youth who was thirteen, fourteen or fifteen years of age at the time of
50 such alleged offense, if such respondent has not entered an admission to
51 all such juvenile offense counts pursuant to section 321.2 of this part
52 that has been accepted pursuant to section 321.3 of this part, has not
53 waived a fact-finding hearing pursuant to part four of this article, and
54 such a fact-finding hearing has not otherwise commenced, the appropriate
55 presentment agency shall, upon the written request of the district
56 attorney having geographic jurisdiction over such alleged offense,

1 promptly serve and file, in the family court in which such petition is
2 pending, a motion seeking to remove such juvenile offender count or
3 counts to the superior criminal court that would exercise trial juris-
4 isdiction over such offense or offenses were an indictment therefor to
5 result.

6 (ii) Such request by the presentment agency may (if sought in such
7 district attorney's written request) include a request to remove to the
8 superior criminal court other specified related offenses of the type
9 described in subdivision six of section 200.20 of the criminal procedure
10 law, provided that the respondent has not entered an admission to such
11 count or counts pursuant to section 321.2 of this part that has been
12 accepted pursuant to section 321.3 of this part, has not waived a fact-
13 finding hearing pursuant to part four of this article, and such a fact-
14 finding hearing has not otherwise commenced.

15 (b) (i) In its motion, which shall be in writing, the presentment
16 agency shall set forth the reasons for the motion for removal, which
17 shall be stated in detail and not in conclusory terms. The written
18 request of the district attorney, which must also be stated in detail
19 and not in conclusory terms, shall be appended to the motion. Such
20 district attorney, or an assistant district attorney acting on behalf of
21 such district attorney, may also serve and file an affirmation in the
22 nature of an amicus curiae in the family court in support of such
23 motion.

24 (ii) The court may grant a hearing on the motion at the request of any
25 party. The presentment agency shall have the burden to show: (A) aggra-
26 vating circumstances that bear directly on the manner in which such
27 crime or crimes were committed; and (B) if the respondent was not the
28 sole participant in such crime or crimes, that the respondent played a
29 major role or was the dominant participant in such crimes. If such
30 burden is met, the court may grant removal only if, after considering
31 the factors set forth in subdivision two of section 210.43 of the crimi-
32 nal procedure law, it determines that removal to a superior court is
33 necessary to accomplish the purposes set forth in section 1.05 of the
34 penal law and assure a just and fair result.

35 2. (a) If the court orders removal of all or a portion of the action
36 to a superior criminal court pursuant to subdivision one of this
37 section, it shall state on the record the factors upon which its deter-
38 mination is based, and shall give its reasons for removal in detail and
39 not in conclusory terms.

40 (b) Where a motion for removal pursuant to subdivision one of this
41 section has been denied, no further motion pursuant to this section may
42 be made by the presentment agency with respect to the same offense or
43 offenses.

44 3. (a) Where an order of removal has been granted pursuant to this
45 section, and the respondent is in detention pursuant to section 320.5 of
46 this part, the order of removal to the superior criminal court must
47 provide that the police officer or peace officer who made the arrest or
48 some other proper officer forthwith and with all reasonable speed take
49 the juvenile to the designated superior court. The order of removal must
50 specify a date certain within ten days from the date of the order of
51 removal for the respondent's appearance in such superior court provided,
52 however, that where the respondent is in detention or in the custody of
53 the sheriff that date must be not later than the next day the superior
54 court is in session.

55 (b) The order of removal must direct that all of the pleadings and
56 proceedings in the action, or a certified copy of same be transferred to

1 the designated superior court and be delivered to and filed with the
2 clerk of that court. For the purposes of this subdivision the term
3 "pleadings and proceedings" includes the minutes of any hearing, inquiry
4 or trial held in the action and the minutes of any plea accepted and
5 entered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (a) conditionally discharging the respondent in accord with section
38 353.1; or

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

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

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

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

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

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

49 § 353.7. Dispositions for certain offenses committed by youths age
50 sixteen or seventeen. 1. If a respondent age sixteen or seventeen at the
51 time of such act is found to have committed an offense that is lawfully
52 classified as a violation or traffic infraction, the court may order the
53 respondent to pay any fine and/or surcharge authorized for such an
54 offense committed by an adult, and/or order an unconditional discharge
55 or conditional discharge in accordance with section 353.1 of this part.

1 2. 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 misdemeanor, the court may, in addition to any other disposition author-
 4 ized by law, order the respondent to pay any fine and/or surcharge
 5 authorized for such an offense committed by an adult.

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

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

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

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

20 18. "Juvenile offender" means, where prosecution is authorized by law,
 21 including but not limited to section 726.05 of the criminal procedure
 22 law and section 325.5 of the family court act: (1) a person thirteen
 23 years old who is criminally responsible for acts constituting murder in
 24 the second degree as defined in subdivisions one and two of section
 25 125.25 of this chapter or such conduct as a sexually motivated felony,
 26 where authorized pursuant to section 130.91 [~~of the penal law~~]; and

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

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

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

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

1 the second degree as defined in subdivisions one and two of section
2 125.25 and in subdivision three of such section provided that the under-
3 lying crime for the murder charge is one for which such person is crimi-
4 nally responsible or for such conduct as a sexually motivated felony,
5 where authorized pursuant to section 130.91 [~~of the penal law~~], except
6 that, in the case of a person thirteen, fourteen or fifteen years of
7 age, the person is only criminally responsible pursuant to this para-
8 graph if such action against him or her was ordered removed from a fami-
9 ly court to a superior criminal court pursuant to section 325.5 of the
10 family court act and section 726.05 of the criminal procedure law; and
11 (b) a person fourteen [~~or~~], fifteen, sixteen or seventeen years of age
12 is criminally responsible for acts constituting the crimes defined in
13 section 135.25 (kidnapping in the first degree); 150.20 (arson in the
14 first degree); subdivisions one and two of section 120.10 (assault in
15 the first degree); 125.20 (manslaughter in the first degree); subdivi-
16 sions one and two of section 130.35 (rape in the first degree); subdivi-
17 sions one and two of section 130.50 (criminal sexual act in the first
18 degree); 130.70 (aggravated sexual abuse in the first degree); 140.30
19 (burglary in the first degree); subdivision one of section 140.25
20 (burglary in the second degree); 150.15 (arson in the second degree);
21 160.15 (robbery in the first degree); subdivision two of section 160.10
22 (robbery in the second degree) of this chapter; or section 265.03 of
23 this chapter, where such machine gun or such firearm is possessed on
24 school grounds, as that phrase is defined in subdivision fourteen of
25 section 220.00 of this chapter; or defined in this chapter as an attempt
26 to commit murder in the second degree or kidnapping in the first degree,
27 or for such conduct as a sexually motivated felony, where authorized
28 pursuant to section 130.91 [~~of the penal law~~], except that, in the case
29 of a person fourteen or fifteen years of age, the person is only crimi-
30 nally responsible pursuant to this paragraph if such action against him
31 or her was ordered removed from a family court to a superior criminal
32 court pursuant to section 325.5 of the family court act and section
33 726.05 of the criminal procedure law.

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

36 2. Subdivision one of this section shall apply when sentencing a juve-
37 nile offender notwithstanding the provisions of any other law that deals
38 with the authorized sentence for persons who are not juvenile offenders.
39 Provided, however, that the limitation prescribed by this section shall
40 not be deemed or construed to bar use of a conviction of a juvenile
41 offender, other than a juvenile offender who has been adjudicated a
42 youthful offender pursuant to section 720.20 of the criminal procedure
43 law, as a previous or predicate felony offender under section 70.04,
44 70.06, 70.08 or 70.10, when sentencing a person who commits a felony
45 after he has reached the age of [~~sixteen~~] eighteen.

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

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

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

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

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

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

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

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