

STATE OF NEW YORK

4121

2017-2018 Regular Sessions

IN SENATE

February 3, 2017

Introduced by Sens. MONTGOMERY, BAILEY, COMRIE, HOYLMAN, KRUEGER, PARKER, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, the executive law, the family court act and the penal law, in relation to raising the age of adult criminal responsibility from sixteen to eighteen so that youth who are charged with a crime may be treated in a more age appropriate manner; 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);

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

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1 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary
2 in the first degree); subdivision one of section 140.25 (burglary in the
3 second degree); 150.15 (arson in the second degree); 160.15 (robbery in
4 the first degree); subdivision two of section 160.10 (robbery in the
5 second degree) of the penal law; or section 265.03 of the penal law,
6 where such machine gun or such firearm is possessed on school grounds,
7 as that phrase is defined in subdivision fourteen of section 220.00 of
8 the penal law; or defined in the penal law as an attempt to commit
9 murder in the second degree or kidnapping in the first degree, or such
10 conduct as a sexually motivated felony, where authorized pursuant to
11 section 130.91 of the penal law.

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

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

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

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

52 § 3. Subdivisions (a), (b) and (c) of section 190.71 of the criminal
53 procedure law, subdivision (a) as amended by chapter 7 of the laws of
54 2007 and subdivisions (b) and (c) as added by chapter 481 of the laws of
55 1978, are amended to read as follows:

1 (a) Except as provided in subdivision six of section 200.20 of this
2 chapter, a grand jury may not indict (i) a person thirteen years of age
3 for any conduct or crime other than conduct constituting a crime defined
4 in subdivisions one and two of section 125.25 (murder in the second
5 degree) or such conduct as a sexually motivated felony, where authorized
6 pursuant to section 130.91 of the penal law; (ii) a person fourteen
7 ~~[or]~~, fifteen, sixteen or seventeen years of age for any conduct or
8 crime other than conduct constituting a crime defined in subdivisions
9 one and two of section 125.25 (murder in the second degree) and in
10 subdivision three of such section provided that the underlying crime for
11 the murder charge is one for which such person is criminally responsi-
12 ble; 135.25 (kidnapping in the first degree); 150.20 (arson in the first
13 degree); subdivisions one and two of section 120.10 (assault in the
14 first degree); 125.20 (manslaughter in the first degree); subdivisions
15 one and two of section 130.35 (rape in the first degree); subdivisions
16 one and two of section 130.50 (criminal sexual act in the first degree);
17 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary
18 in the first degree); subdivision one of section 140.25 (burglary in the
19 second degree); 150.15 (arson in the second degree); 160.15 (robbery in
20 the first degree); subdivision two of section 160.10 (robbery in the
21 second degree) of the penal law; ~~[subdivision four of section 265.02 of
22 the penal law, where such firearm is possessed on school grounds, as
23 that phrase is defined in subdivision fourteen of section 220.00 of the
24 penal law,]~~ or section 265.03 of the penal law, where such machine gun
25 or such firearm is possessed on school grounds, as that phrase is
26 defined in subdivision fourteen of section 220.00 of the penal law; or
27 defined in the penal law as an attempt to commit murder in the second
28 degree or kidnapping in the first degree, or such conduct as a sexually
29 motivated felony, where authorized pursuant to section 130.91 of the
30 penal law.

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

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

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

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

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

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

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

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

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

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

41 § 7. Subparagraphs (i), (iii) and the second undesignated paragraph of
42 paragraph (g) of subdivision 5 of section 220.10 of the criminal proce-
43 dure law, subparagraph (i) as amended by chapter 410 of the laws of
44 1979, subparagraph (iii) as amended by chapter 264 of the laws of 2003
45 and the second undesignated paragraph as amended by chapter 920 of the
46 laws of 1982, are amended to read as follows:

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

52 (iii) Where the indictment does not charge a crime specified in
53 subparagraph (i) of this paragraph, the district attorney may recommend
54 removal of the action to the family court. Upon making such recommenda-
55 tion the district attorney shall submit a subscribed memorandum setting
56 forth: (1) a recommendation that the interests of justice would best be

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

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

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

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

41 § 9. Section 330.25 of the criminal procedure law, as added by chapter
42 481 of the laws of 1978, and subdivision 2 as amended by chapter 920 of
43 the laws of 1982, is amended to read as follows:

44 § 330.25 Removal after verdict.

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

50 2. [~~If the district attorney consents to the motion for removal pursu-~~
51 ~~ant to this section, he shall file a subscribed memorandum with the~~
52 ~~court setting forth (1) a recommendation that~~] In determining the
53 motion, the court shall consider: (1) whether the interests of justice
54 would best be served by removal of the action to the family court; and
55 (2) if the conviction is of an offense set forth in paragraph (b) of
56 subdivision one of section 210.43 of this chapter, whether specific

1 factors exist, one or more of which reasonably [~~support~~] supports the
2 [~~recommendation~~] motion, showing, (i) mitigating circumstances that bear
3 directly upon the manner in which the crime was committed, or (ii) where
4 the defendant was not the sole participant in the crime, that the
5 defendant's participation was relatively minor although not so minor as
6 to constitute a defense to prosecution, or (iii) where the juvenile
7 offender has no previous adjudications of having committed a designated
8 felony act, as defined in subdivision eight of section 301.2 of the
9 family court act, regardless of the age of the offender at the time of
10 commission of the act, that the criminal act was not part of a pattern
11 of criminal behavior and, in view of the history of the offender, is not
12 likely to be repeated.

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

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

32 § 510.15 Commitment of principal under [~~sixteen~~] eighteen.

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

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

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

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

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

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

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

18 § 14. The criminal procedure law is amended by adding a new article
19 726 to read as follows:

20 ARTICLE 726

21 REMOVAL OF PROCEEDINGS AGAINST AN ALLEGED

22 JUVENILE DELINQUENT FROM FAMILY COURT TO A SUPERIOR COURT

23 Section 726.00 Applicability.

24 726.05 Filing of order of removal and proceedings thereon.

25 § 726.00 Applicability.

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

32 § 726.05 Filing of order of removal and proceedings thereon.

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

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

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

50 4. Upon the filing of an order of removal in the superior criminal
51 court, the family court article three action upon which the order is
52 based shall be terminated and there shall be no further proceedings in
53 the family court with respect to the offense, unless such action is
54 removed back to the family court in accordance with the provisions of
55 article seven hundred twenty-five of this chapter. All further
56 proceedings including motions and appeals shall be in accordance with

1 laws appertaining to the criminal court and for this purpose all find-
2 ings, determinations, verdicts and orders, other than the order of
3 removal, shall be deemed to have been made by the superior criminal
4 court.

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

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

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

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

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

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

1 such firearm is possessed on school grounds, as that phrase is defined
2 in subdivision fourteen of section 220.00 of the penal law committed by
3 a person fourteen [~~or~~], fifteen, sixteen or seventeen years of age; or
4 such conduct committed as a sexually motivated felony, where authorized
5 pursuant to section 130.91 of the penal law; (v) defined in section
6 120.05 (assault in the second degree) or 160.10 (robbery in the second
7 degree) of the penal law committed by a person fourteen or fifteen years
8 of age but only where there has been a prior finding by a court that
9 such person has previously committed an act which, if committed by an
10 adult, would be the crime of assault in the second degree, robbery in
11 the second degree or any designated felony act specified in clause (i),
12 (ii) or (iii) of this subdivision regardless of the age of such person
13 at the time of the commission of the prior act; or (vi) other than a
14 misdemeanor, committed by a person at least seven but less than
15 [~~sixteen~~] eighteen years of age, but only where there has been two prior
16 findings by the court that such person has committed a prior act which,
17 if committed by an adult would be a felony:

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

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

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

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

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

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

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

1 presentment agency shall, upon the written request of the district
2 attorney having geographic jurisdiction over such alleged offense,
3 promptly serve and file, in the family court in which such petition is
4 pending, a motion seeking to remove such juvenile offender count or
5 counts to the superior criminal court that would exercise trial juris-
6 isdiction over such offense or offenses were an indictment therefor to
7 result.

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

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

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

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

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

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

1 (b) The order of removal must direct that all of the pleadings and
2 proceedings in the action, or a certified copy of same be transferred to
3 the designated superior court and be delivered to and filed with the
4 clerk of that court. For the purposes of this subdivision the term
5 "pleadings and proceedings" includes the minutes of any hearing, inquiry
6 or trial held in the action and the minutes of any plea accepted and
7 entered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (a) conditionally discharging the respondent in accord with section
40 353.1; or

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

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

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

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

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

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

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

1 offense committed by an adult, and/or order an unconditional discharge
2 or conditional discharge in accordance with section 353.1 of this part.

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

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

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

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

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

22 18. "Juvenile offender" means, where prosecution is authorized by law,
23 including but not limited to section 726.05 of the criminal procedure
24 law and section 325.5 of the family court act: (1) a person thirteen

25 years old who is criminally responsible for acts constituting murder in
26 the second degree as defined in subdivisions one and two of section
27 125.25 of this chapter or such conduct as a sexually motivated felony,
28 where authorized pursuant to section 130.91 [~~of the penal law~~]; and

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

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

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

1 2. (a) A person thirteen, fourteen [~~ex~~], fifteen, sixteen or seventeen
2 years of age is criminally responsible for acts constituting murder in
3 the second degree as defined in subdivisions one and two of section
4 125.25 and in subdivision three of such section provided that the under-
5 lying crime for the murder charge is one for which such person is crimi-
6 nally responsible or for such conduct as a sexually motivated felony,
7 where authorized pursuant to section 130.91 [~~of the penal law~~], except
8 that, in the case of a person thirteen, fourteen or fifteen years of
9 age, the person is only criminally responsible pursuant to this para-
10 graph if such action against him or her was ordered removed from a fami-
11 ly court to a superior criminal court pursuant to section 325.5 of the
12 family court act and section 726.05 of the criminal procedure law; and
13 (b) a person fourteen [~~ex~~], fifteen, sixteen or seventeen years of age
14 is criminally responsible for acts constituting the crimes defined in
15 section 135.25 (kidnapping in the first degree); 150.20 (arson in the
16 first degree); subdivisions one and two of section 120.10 (assault in
17 the first degree); 125.20 (manslaughter in the first degree); subdivi-
18 sions one and two of section 130.35 (rape in the first degree); subdivi-
19 sions one and two of section 130.50 (criminal sexual act in the first
20 degree); 130.70 (aggravated sexual abuse in the first degree); 140.30
21 (burglary in the first degree); subdivision one of section 140.25
22 (burglary in the second degree); 150.15 (arson in the second degree);
23 160.15 (robbery in the first degree); subdivision two of section 160.10
24 (robbery in the second degree) of this chapter; or section 265.03 of
25 this chapter, where such machine gun or such firearm is possessed on
26 school grounds, as that phrase is defined in subdivision fourteen of
27 section 220.00 of this chapter; or defined in this chapter as an attempt
28 to commit murder in the second degree or kidnapping in the first degree,
29 or for such conduct as a sexually motivated felony, where authorized
30 pursuant to section 130.91 [~~of the penal law~~], except that, in the case
31 of a person fourteen or fifteen years of age, the person is only crimi-
32 nally responsible pursuant to this paragraph if such action against him
33 or her was ordered removed from a family court to a superior criminal
34 court pursuant to section 325.5 of the family court act and section
35 726.05 of the criminal procedure law.

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

38 2. Subdivision one of this section shall apply when sentencing a juve-
39 nile offender notwithstanding the provisions of any other law that deals
40 with the authorized sentence for persons who are not juvenile offenders.
41 Provided, however, that the limitation prescribed by this section shall
42 not be deemed or construed to bar use of a conviction of a juvenile
43 offender, other than a juvenile offender who has been adjudicated a
44 youthful offender pursuant to section 720.20 of the criminal procedure
45 law, as a previous or predicate felony offender under section 70.04,
46 70.06, 70.08 or 70.10, when sentencing a person who commits a felony
47 after he has reached the age of [~~sixteen~~] eighteen.

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

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

1 minimum period of imprisonment shall be not less than seven and one-half
2 years but shall not exceed fifteen years;

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

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

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

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

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

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