STATE OF NEW YORK

9173--A

IN ASSEMBLY

February 7, 2022

Introduced by M. of A. CUSICK, WOERNER, BUTTENSCHON, McDONALD, CYMBROWITZ, GRIFFIN, ABBATE, THIELE, WALLACE, EICHENSTEIN -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the family court act, in relation to the prosecution of certain juveniles charged with certain felony crimes and the handling of such cases

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 722.23 of the criminal procedure law, as added by section 1-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

§ 722.23 Removal of adolescent offenders to family court.

1. (a) Following the arraignment of a defendant charged with a crime committed when he or she was sixteen[~~,~~] or [~~commencing October first, two thousand nineteen,~~] seventeen years of age, other than any class A felony except for those defined in article two hundred twenty of the penal law, a violent felony defined in section 70.02 of the penal law or a felony listed in paragraph one or two of subdivision forty-two of section 1.20 of this chapter, **a felony in violation of article two hundred sixty-five of the penal law,** or an offense set forth in the vehicle and traffic law, the court shall order the removal of the action to the family court in accordance with the applicable provisions of article seven hundred twenty-five of this title unless, within thirty calendar days of such arraignment, the district attorney makes a motion to prevent removal of the action pursuant to this subdivision. If the defendant fails to report to the probation department as directed, the thirty day time period shall be tolled until such time as he or she reports to the probation department.

(b) A motion to prevent removal of an action in youth part shall be made in writing and upon prompt notice to the defendant. The motion shall contain allegations of sworn fact based upon personal knowledge of

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

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the affiant, and shall indicate if the district attorney is requesting a hearing. The motion shall be noticed to be heard promptly.

(c) The defendant shall be given an opportunity to reply. The defendant shall be granted any reasonable request for a delay. Either party may request a hearing on the facts alleged in the motion to prevent removal of the action. The hearing shall be held expeditiously.

(d) The court shall deny the motion to prevent removal of the action in youth part unless the court makes a determination upon such motion by the district attorney that extraordinary circumstances exist that should prevent the transfer of the action to family court.

(e) The court shall make a determination in writing or on the record within five days of the conclusion of the hearing or submission by the defense, whichever is later. Such determination shall include findings of fact and to the extent practicable conclusions of law.

(f) For the purposes of this section, there shall be a presumption against custody and case planning services shall be made available to the defendant.

(g) Notwithstanding any other provision of law, section 308.1 of the family court act shall apply to all actions transferred pursuant to this section provided, however, such cases shall not be considered removals subject to subdivision thirteen of such section 308.1.

(h) Nothing in this subdivision shall preclude, and a court may order, the removal of an action to family court where all parties agree or pursuant to this chapter.

2. (a) Upon the arraignment of a defendant charged with a crime committed when he or she was sixteen or[~~, commencing October first, two thousand nineteen,~~] seventeen years of age on a class A felony, other than those defined in article [~~220~~] **two hundred twenty** of the penal law, [~~or~~] a violent felony defined in section 70.02 of the penal law, **or a felony in violation of article two hundred sixty-five of the penal law,** the court shall schedule an appearance no later than six calendar days from such arraignment for the purpose of reviewing the accusatory instrument pursuant to this subdivision. The court shall notify the district attorney and defendant regarding the purpose of such appearance.

(b) Upon such appearance, the court shall review the accusatory instrument and any other relevant facts for the purpose of [~~making a determination~~] **determining whether to remove the action to the family court** pursuant to paragraph (c) of this subdivision. Both parties may be heard and submit information relevant to the determination.

(c) [~~The court shall order the action to proceed in accordance with subdivision one of this section unless, after reviewing the papers and hearing from the parties, the court determines in writing that~~] **Other than any class A felony except for those defined in article two hundred twenty of the penal law, a violent felony defined in section 70.02 of the penal law, a felony listed in paragraph one or two of subdivision forty-two of section 1.20 of this chapter, a felony in violation of article two hundred sixty-five of the penal law, or an offense set forth in the vehicle and traffic law, the court may, but shall not be required to, order removal after considering the criteria specified in subdivision two of section 722.22 of this article; provided, however, that the court shall not order removal if** the district attorney proved by a preponderance of the evidence one or more of the following as set forth in the accusatory instrument:

(i) the defendant caused **or actively participated in a crime that caused** significant physical injury to a person other than a participant

in the offense **or a crime in accordance with accessorial conduct as defined in section 20.00 of the penal law or actively participated in a crime through accessorial conduct as defined in section 20.00 of the penal law**; or

(ii) the defendant [~~displayed~~] **possessed** a firearm, shotgun, rifle or deadly weapon as defined in the penal law [~~in furtherance of such offense~~] **or possessed what appeared to be a firearm, shotgun, rifle or deadly weapon as defined in the penal law, or actively participated in a crime where a co-defendant possessed a firearm, shotgun, rifle or deadly weapon as defined in the penal law or where a co-defendant possessed what appears to be a firearm, shotgun, rifle or deadly weapon as defined in the penal law**; or

(iii) the defendant unlawfully engaged in sexual intercourse, oral sexual conduct, anal sexual conduct or sexual contact as defined in section 130.00 of the penal law.

(d) Where the court makes a determination that the action shall not proceed in accordance with subdivision one of this section, such determination shall be made in writing or on the record and shall include findings of fact and to the extent practicable conclusions of law.

(e) Nothing in this subdivision shall preclude, and the court may order, the removal of an action to family court where all parties agree or pursuant to this chapter.

3. Notwithstanding the provisions of any other law, if at any time one or more charges in the accusatory instrument are reduced, such that the elements of the highest remaining charge would be removable pursuant to subdivisions one or two of this section, then the court, sua sponte or in response to a motion pursuant to subdivisions one or two of this section by the defendant, shall promptly notify the parties and direct that the matter proceed in accordance with subdivision one of this section, provided, however, that in such instance, the district attorney must file any motion to prevent removal within thirty days of effecting or receiving notice of such reduction.

4. A defendant may waive review of the accusatory instrument by the court and the opportunity for removal in accordance with this section, provided that such waiver is made by the defendant knowingly, voluntarily and in open court, in the presence of and with the approval of his or her counsel and the court. An earlier waiver shall not constitute a waiver of review and the opportunity for removal under this section.

§ 2. Subdivision 5 of section 722.21 of the criminal procedure law, as added by section 1-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

5. Notwithstanding subdivisions two and three of this section, at the request of the district attorney, the court shall order removal of an action against an adolescent offender charged with an offense listed in paragraph (a) of subdivision two of section 722.23 of this article, to the family court pursuant to the provisions of article seven hundred twenty-five of this title and upon consideration of the criteria specified in subdivision two of section 722.22 of this article, it is determined that to do so would be in the interests of justice. Where, however, the felony complaint charges the adolescent offender with murder in the second degree as defined in section 125.25 of the penal law, rape in the first degree as defined in subdivision one of section 130.35 of the penal law, criminal sexual act in the first degree as defined in subdivision one of section 130.50 of the penal law, or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20 of this chapter, a determination that such action be removed to the family

court shall, in addition, be based upon a finding of one or more of the following factors: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution; or (iii) possible deficiencies in proof of the crime. **In determining whether an action be removed to the family court, the court may also consider the factors provided for in subdivision two of section 722.22 of this article.**

§ 3. Paragraphs (h) and (i) of subdivision 2 of section 722.22 of the criminal procedure law, as added by section 1-a of part WWW of chapter 59 of the laws of 2017, are amended to read as follows:

(h) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion; [~~and~~]

(i) **any other pending charges against the individual;**

(j) whether the individual was an active participant in the crime or whether the individual is liable through accessorial conduct as defined in section 20.00 of the penal law;

(k) any other relevant fact indicating that a judgment of conviction in the criminal court would serve no useful purpose**; and**

(l) any other factor the court deems relevant to its determination.

§ 4. Section 381.1 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

§ 381.1. Transfer of records and information to institutions and agencies. **1.** Whenever a person is placed with an institution suitable for placement of a person adjudicated a juvenile delinquent maintained by the state or any subdivision thereof or to an authorized agency including the division for youth, the family court placing such person shall forthwith transmit a copy of the orders of the family court pursuant to sections 352.1 and 352.2 and of the probation report and all other relevant evaluative records in the possession of the family court and probation department related to such person, including but not limited to any diagnostic, educational, medical, psychological and psychiatric records with respect to such person to such institution or agency, notwithstanding any contrary provision of law.

2. For any defendant appearing before the youth part of the superior court, the family court shall, upon request of the youth part judge, forward a copy of all previous family court records created under this article relating to such defendant in order to assist the youth part's determination as to whether to remove a case to family court, including, notwithstanding any contrary provision of law, whether the case was sealed pursuant to subdivision one of section 375.1 of this article based on a disposition defined in paragraph (a), (b), (c), (d), (f), (g), (h), or (i) of subdivision two of section 375.1 of this article. Such records shall include any records created by probation services in accordance with section 308.1 of this article. The chief administrator of the unified court system shall create an electronic sharing mechanism to ensure secure, timely, and efficient access between the family court and youth part, as well as to the prosecutor on the youth part case, and the defense.

3. Whenever a person subject to this act has been arrested, the family court shall promptly make any and all previous family court records created under this article related to that person available to the probation services for the purpose of determining whether the person is eligible for adjustment services, including, notwithstanding any contrary provision of law, whether the case was sealed pursuant to subdivision

one of section 375.1 of this article based on a disposition defined in paragraph (a), (b), (c), (d), (f), (g), (h), or (i) of subdivision two of section 375.1 of this article. An electronic sharing mechanism shall be created between the family court and probation services to ensure secure, timely, and efficient access to such records.

§ 5. Section 381.3 of the family court act, as added by chapter 920 of the laws of 1982, paragraph (b) of subdivision 2 as amended by chapter 926 of the laws of 1982, is amended to read as follows:

§ 381.3. Use of police records. 1. All police records relating to the arrest and disposition of any person under this article shall be kept in files separate and apart from the arrests of adults and shall be withheld from public inspection. For purposes of this section, "public inspection" shall not mean a presentment agency in family court, a law enforcement agency responsible for the subject criminal investigation, probation services, or any agency designated in subdivision two of section 720.35 of the criminal procedure act.

2. Notwithstanding the provisions of subdivision one, the family court in the county in which the petition was adjudicated may, upon motion and for good cause shown, order [~~such~~] any and all previous family court records open:

(a) to the respondent or his parent or person responsible for his care; or

(b) if the respondent is subsequently convicted of a crime, to a judge of the court in which he was convicted, unless such record has been sealed pursuant to section 375.1 of this article, except for a disposition defined in paragraph (a), (b), (c), (d), (f), (g), (h), or (i) of subdivision two of section 375.1 of this article.

3. An order issued under subdivision two of this section must be in writing.

§ 6. Section 302.2 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

§ 302.2. Statute of limitations. 1. A juvenile delinquency proceeding charging the respondent with a crime allegedly committed when such respondent was under the age of sixteen must be commenced within the period of limitation prescribed in section 30.10 of the criminal procedure law or, unless the alleged act is a designated felony as defined in subdivision eight of section 301.2 of this part, commenced before the respondent's eighteenth birthday, whichever occurs earlier. When the alleged act constitutes a designated felony as defined in subdivision eight of section 301.2 of this part such proceeding must be commenced within [~~such~~] the period of limitation prescribed in section 30.10 of the criminal procedure law or before the respondent's twentieth birthday, whichever occurs earlier.

2. A juvenile delinquency proceeding charging the respondent with a crime allegedly committed when such respondent was age sixteen years or older must be commenced within the period of limitation prescribed in section 30.10 of the criminal procedure law or, unless the alleged act is a designated felony as defined in subdivision eight of section 301.2 of this part, commenced before the respondent's twentieth birthday, whichever occurs earlier. When the alleged act constitutes a designated felony as defined in subdivision eight of section 301.2 of this part, such proceeding must be commenced within the period of limitation prescribed in section 30.10 of the criminal procedure law or before the respondent's twenty-second birthday, whichever occurs earlier.

§ 7. This act shall take effect immediately.