STATE OF NEW YORK

6409

2023-2024 Regular Sessions

IN ASSEMBLY

April 6, 2023

Introduced by M. of A. BARCLAY, GANDOLFO, NORRIS, ANGELINO, WALSH, SMULLEN, PALMESANO, DURSO, GALLAHAN, DeSTEFANO, HAWLEY, MORINELLO, BENDETT, MANKTELOW, FLOOD, MCGOWAN, REILLY, GRAY, MIKULIN, TANNOUSIS, TAGUE, SIMPSON, E. BROWN, SLATER, RA, BEEPHAN, NOVAKHOV, FRIEND, BLUMENCRANZ, LEMONDES, J. M. GIGLIO, MILLER, BYRNES, K. BROWN, J. A. GIGLIO, CURRAN, FITZPATRICK, MAHER -- read once and referred to the Committee on Judiciary

AN ACT to amend the criminal procedure law and the family court act, in relation to the use of records and information in the family court; and to repeal certain provisions of the criminal procedure law relating thereto

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

Section 1. Paragraphs (d) and (f) of subdivision 1 of 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, are amended to read as follows:

(d) The court shall deny the motion to prevent removal of the action in youth part unless the court makes a determination upon **receiving and considering the records and information on file with the family court and upon** such motion by the district attorney that [~~extraordinary~~] **one or more** circumstances exist that should prevent the transfer of the action to family court **including, but not limited to:**

(i) the defendant caused serious physical injury or death to a person other than a participant in the offense; or

(ii) the defendant displayed or displayed what appeared to be a firearm, shotgun, rifle or deadly weapon as defined in the penal law in furtherance of such offense; or

(iii) the defendant possessed a firearm or weapon as prescribed in article two hundred sixty-five or article four hundred ninety of the penal law; or

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

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(iv) 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.

(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.

§ 2. Paragraphs (c), (d) and (e) of subdivision 2 of 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, are amended to read as follows:

(c) The court shall order the action to [~~proceed in accordance with subdivision one of this section~~] remain in youth part unless, after reviewing the papers and hearing from the parties, the court determines in writing that [~~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 significant physical injury to a person other than a participant in the offense; or~~

~~(ii) the defendant displayed a firearm, shotgun, rifle or deadly weapon as defined in the penal law in furtherance of such offense; 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~~] all parties agree that the action may be removed to family court in accordance with subdivision five of section 722.21 of this article. Such determination shall be made in writing [~~or~~] and on the record and shall include findings of fact and to the extent practicable conclusions of law.

[~~(e)~~] (d) 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. Section 725.15 of the criminal procedure law is REPEALED.

§ 4. Subdivision 4 of section 350.3 of the family court act, as added by section 70-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

4. The victim has the right to make a statement with regard to any matter relevant to the question of disposition. If the victim chooses to make a statement, such individual shall notify the court at least ten days prior to the date of the dispositional hearing. The court shall notify the respondent no less than seven days prior to the dispositional hearing of the victim's intent to make a statement. The victim shall [~~not~~] be made aware of the final disposition of the case.

§ 5. Section 381.2 of the family court act, as added by chapter 920 of the laws of 1982 and subdivision 2 as amended by chapter 926 of the laws of 1982, is amended to read as follows:

§ 381.2. Use of records in other courts. [~~1. Neither the fact that a person was before the family court under this article for a hearing nor any confession, admission or statement made by him to the court or to any officer thereof in any stage of the proceeding is admissible as evidence against him or his interests in any other court.~~

~~2. Notwithstanding the provisions of subdivision one, another~~] Another court[~~, in imposing sentence upon an adult after conviction~~] may receive and consider the records and information on file with the family court, unless such records and information have been sealed pursuant to section 375.1.

§ 6. Paragraph (b) of subdivision 2 of section 381.3 of the family court act, as amended by chapter 926 of the laws of 1982, is amended to read as follows:

(b) if the respondent is subsequently convicted of a crime **or arraigned pursuant to section 722.21 of the criminal procedure law**, to a judge of the court in which he was convicted, unless such record has been sealed pursuant to section 375.1.

§ 7. Paragraph (g-1) of subdivision 5 of section 220.10 of the criminal procedure law, as added by chapter 809 of the laws of 2021, is amended to read as follows:

(g-1) Where a defendant is an adolescent offender, the provisions of paragraphs (a), (b), (c) and (d) of this subdivision shall [~~not~~] apply. Where the plea is to an offense constituting a misdemeanor, the plea shall be deemed replaced by an order of fact-finding in a juvenile delinquency proceeding, pursuant to section 346.1 of the family court act, and the action shall be removed to the family court in accordance with article seven hundred twenty-five of this chapter. Where the plea is to an offense constituting a felony, the court may remove the action to the family court in accordance with section 722.23 and article seven hundred twenty-five of this chapter.

§ 8. This act shall take effect on the ninetieth day after it shall have become a law.