§ 190.71 Grand jury; direction to file request for removal to family court.

(a) Except as provided in subdivision six of section 200.20 of this chapter, a grand jury may not indict (i) a person thirteen years of age for any conduct or crime other than conduct constituting a crime defined in subdivisions one and two of section 125.25 (murder in the second degree) or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) a person fourteen or fifteen years of age for any conduct or crime other than conduct constituting a crime defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); paragraphs (a) and (b) of subdivision one, paragraphs (a) and (b) of subdivision two and paragraphs (a) and (b) of subdivision three of section 130.35 (rape in the first degree); former subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of former section 130.50; 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law; or defined in the penal law as an attempt to commit murder in the second degree or kidnapping in the first degree, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law.

(b) A grand jury may vote to file a request to remove a charge to the family court if it finds that a person sixteen, or commencing October first, two thousand nineteen, seventeen years of age or younger did an act which, if done by a person over the age of sixteen, or commencing October first, two thousand nineteen, seventeen, would constitute a crime provided (1) such act is one for which it may not indict; (2) it

does not indict such person for a crime; and (3) the evidence before it is legally sufficient to establish that such person did such act and competent and admissible evidence before it provides reasonable cause to believe that such person did such act.

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

(d) Upon the filing of such grand jury request, the court must, unless such request is improper or insufficient on its face, issue an order approving such request and direct that the charge be removed to the family court in accordance with the provisions of article seven hundred twenty-five of this chapter.