§ 720.20 Youthful offender determination; when and how made; procedure thereupon.

1. Upon conviction of an eligible youth, the court must order a pre-sentence investigation of the defendant. After receipt of a written report of the investigation and at the time of pronouncing sentence the court must determine whether or not the eligible youth is a youthful offender. Such determination shall be in accordance with the following criteria:

(a) If in the opinion of the court the interest of justice would be served by relieving the eligible youth from the onus of a criminal record and by not imposing an indeterminate term of imprisonment of more than four years, the court may, in its discretion, find the eligible youth is a youthful offender; and

(b) Where the conviction is had in a local criminal court and the eligible youth had not prior to commencement of trial or entry of a plea of guilty been convicted of a crime or found a youthful offender, the court must find he is a youthful offender.

2. Where an eligible youth is convicted of two or more crimes set forth in separate counts of an accusatory instrument or set forth in two or more accusatory instruments consolidated for trial purposes, the court must not find him a youthful offender with respect to any such conviction pursuant to subdivision one of this section unless it finds him a youthful offender with respect to all such convictions.

3. Upon determining that an eligible youth is a youthful offender, the court must direct that the conviction be deemed vacated and replaced by a youthful offender finding; and the court must sentence the defendant pursuant to section 60.02 of the penal law.

4. Upon determining that an eligible youth is not a youthful offender, the court must order the accusatory instrument unsealed and continue the action to judgment pursuant to the ordinary rules governing criminal prosecutions.

5. (a) An individual who was an eligible youth who was not determined

to be a youthful offender by the sentencing court may apply to the sentencing court for a new determination after at least five years have passed since the imposition of the sentence for which such individual was not determined to be a youthful offender, or, if the individual was sentenced to a period of incarceration, including a period of incarceration imposed in conjunction with a sentence of probation, the individual's latest release from incarceration, provided that such individual has not been convicted of any new crime since the imposition of such sentence.

(b) In considering whether such individual should be determined to be a youthful offender pursuant to paragraph (a) of this subdivision, the court shall consider the following factors:

(i) whether relieving the individual from the onus of a criminal record would facilitate rehabilitation and successful reentry and reintegration into society;

(ii) the manner in which the crime was committed;

(iii) the role of the individual in the crime which resulted in the conviction;

(iv) the individual's age at the time of the crime;

(v) the length of time since the crime was committed;

(vi) any mitigating circumstances at the time the crime was committed;

(vii) the individual's criminal record;

(viii) the individual's attitude toward society and respect for the law; and

(ix) evidence of rehabilitation and demonstration of living a productive life including, but not limited to participation in educational and vocational programs, employment history, alcohol and substance abuse treatment, and family and community involvement.

(c) A copy of an application filed under this subdivision shall be served upon the district attorney of the county in which the individual was convicted. The district attorney shall notify the court within forty-five days if he or she objects to the application for sealing. The court may hold a hearing on the application on its own motion or on motion of the district attorney or the individual filing the application. If the district attorney does not file a timely objection, the court shall proceed forthwith.