§ 722.21 Proceedings upon felony complaint; adolescent offender.

1. When an adolescent offender is arraigned before a youth part, the provisions of this section shall apply. If the youth part is not in session, the defendant shall be brought before the most accessible magistrate designated by the appellate division of the supreme court to act as a youth part for the purpose of making a determination whether such adolescent offender shall be detained or, with the consent of the district attorney, immediately removed to family court. If the defendant is ordered to be detained, he or she shall be brought before the next session of the youth part. If the defendant is not detained, he or she shall be ordered to appear at the next session of the youth part, family court or the local probation department.

2. If the defendant waives a hearing upon the felony complaint, the court must order that the defendant be held for the action of the grand jury with respect to the charge or charges contained in the felony complaint.

3. If there be a hearing, then at the conclusion of the hearing, the youth part court must dispose of the felony complaint as follows:

(a) If there is reasonable cause to believe that the defendant committed a felony, the court must order that the defendant be held for the action of a grand jury; or

(b) If there is not reasonable cause to believe that the defendant committed a felony but there is reasonable cause to believe that the defendant is a "juvenile delinquent" as defined in subdivision one of section 301.2 of the family court act, the court must specify the act or acts it found reasonable cause to believe the defendant did and direct that the action be transferred to the family court in accordance with the provisions of article seven hundred twenty-five of this title, provided, however, notwithstanding any other provision of law, section 308.1 of the family court act shall apply to actions transferred pursuant to this subdivision and such actions shall not be considered removals subject to subdivision thirteen of such section 308.1; or

(c) If there is not reasonable cause to believe that the defendant committed any criminal act, the court must dismiss the felony complaint

and discharge the defendant from custody if he is in custody, or if he is at liberty on bail, it must exonerate the bail.

4. Notwithstanding the provisions of subdivisions two and three of this section, where the defendant is charged with a felony, other than a class A felony defined outside 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, except as provided in paragraph (c) of subdivision two of section 722.23 of this article, the court shall, upon notice from the district attorney that he or she will not file a motion to prevent removal pursuant to section 722.23 of this article, order transfer of an action against an adolescent offender to the family court pursuant to the provisions of article seven hundred twenty-five of this title, provided, however, notwithstanding any other provision of law, section 308.1 of the family court act shall apply to actions transferred pursuant to this subdivision and such actions shall not be considered removals subject to subdivision thirteen of such section 308.1.

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 paragraph (a) of subdivision one, paragraph (a) of subdivision two and paragraph (a) of subdivision three of section 130.35 of the penal law, rape in the first degree as formerly defined in subdivision one of section 130.35 of the penal law, a crime formerly 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.

6. (a) If the court orders removal of the action to family court pursuant to subdivision five of this section, it shall state on the record the factor or factors upon which its determination is based, and the court shall give its reasons for removal in detail and not in conclusory terms.

(b) The district attorney shall state upon the record the reasons for his consent to removal of the action to the family court where such consent is required. The reasons shall be stated in detail and not in conclusory terms.

(c) For the purpose of making a determination pursuant to subdivision five the court may make such inquiry as it deems necessary. Any evidence which is not legally privileged may be introduced. If the defendant testifies, his testimony may not be introduced against him in any future proceeding, except to impeach his testimony at such future proceeding as inconsistent prior testimony.

(d) Except as provided by paragraph (e), this section shall not be construed to limit the powers of the grand jury.

(e) Where an action against a defendant has been removed to the family court pursuant to this section, there shall be no further proceedings against the adolescent offender in any local or superior criminal court including the youth part of the superior court for the offense or offenses which were the subject of the removal order.