§ 722.22 Motion to remove juvenile offender to family court.

1. After a motion by a juvenile offender, pursuant to subdivision five of section 722.20 of this article, or after arraignment of a juvenile offender upon an indictment, the court may, on motion of any party or on its own motion:

(a) except as otherwise provided by paragraph (b) of this subdivision, order removal of the action to the family court pursuant to the provisions of article seven hundred twenty-five of this title, if, after consideration of the factors set forth in subdivision two of this section, the court determines that to do so would be in the interests of justice; or

(b) with the consent of the district attorney, order removal of an action involving an indictment charging a juvenile 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, to the family court pursuant to the provisions of article seven hundred twenty-five of this title if the court finds one or more of the following factors: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; (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 the proof of the crime, and, after consideration of the factors set forth in subdivision two of this section, the court determined that removal of the action to the family court would be in the interests of justice.

2. In making its determination pursuant to subdivision one of this section the court shall, to the extent applicable, examine individually and collectively, the following:

(a) the seriousness and circumstances of the offense;

(b) the extent of harm caused by the offense;

(c) the evidence of guilt, whether admissible or inadmissible at trial;

(d) the history, character and condition of the defendant;

(e) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;

(f) the impact of a removal of the case to the family court on the safety or welfare of the community;

(g) the impact of a removal of the case to the family court upon the confidence of the public in the criminal justice system;

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

(i) any other relevant fact indicating that a judgment of conviction in the criminal court would serve no useful purpose.

3. The procedure for bringing on a motion pursuant to subdivision one of this section, shall accord with the procedure prescribed in subdivisions one and two of section 210.45 of this chapter. After all papers of both parties have been filed and after all documentary evidence, if any, has been submitted, the court must consider the same for the purpose of determining whether the motion is determinable on the motion papers submitted and, if not, may make such inquiry as it deems necessary for the purpose of making a determination.

4. For the purpose of making a determination pursuant to this section, 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.

5. a. If the court orders removal of the action to family court, 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. The reasons

shall be stated in detail and not in conclusory terms.