

Raise the Age Amendment

1 AN ACT to amend the family court act and the criminal procedure law, in relation to the
2 jurisdiction of family court.

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

5

6 Section 1. Section 302.2 of the family court act, as added by chapter 920 of the laws of 1982, is
7 amended to read as follows:

8 § 302.2. Statute of limitations. 1. A juvenile delinquency proceeding charging the respondent with
9 a crime allegedly committed when such respondent was under the age of sixteen must be
10 commenced within the period of limitation prescribed in section 30.10 of the criminal procedure
11 law or, unless the alleged act is a designated felony as defined in subdivision eight of section 301.2,
12 commenced before the respondent's eighteenth birthday, whichever occurs earlier. When the
13 alleged act constitutes a designated felony as defined in subdivision eight of section 301.2 such
14 proceeding must be commenced within ~~such~~ the period of limitation prescribed in section 30.10
15 of the criminal procedure law or before the respondent's twentieth birthday, whichever occurs
16 earlier.

17 2. A juvenile delinquency proceeding charging the respondent with a crime allegedly committed
18 when such respondent was aged sixteen years or older must be commenced within the period of
19 limitation prescribed in section 30.10 of the criminal procedure law or, unless the alleged act is a
20 designated felony as defined in subdivision eight of section 301.2, commenced before the
21 respondent's twentieth birthday, whichever occurs earlier. When the alleged act constitutes a
22 designated felony as defined in subdivision eight of section 301.2, such proceeding must be
23 commenced within the period of limitation prescribed in section 30.10 of the criminal procedure
24 law or before the respondent's twenty-second birthday, whichever occurs earlier.

25 § 2. Subdivisions 2, 3 and 4 of Section 308.1 of the family court act, as added by chapter 920 of
26 the laws of 1982, is amended to read as follows:

27 2. Except as provided in subdivisions three and four of this section, the probation service may,
28 in accordance with rules of court, adjust suitable cases before a petition is filed. The probation
29 service shall promptly communicate its intention to offer adjustment services to a child to the
30 presentment agency and law enforcement agency responsible for the subject investigation. The
31 inability of the respondent or his or her family to make restitution shall not be a factor in a

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1 decision to adjust a case or in a recommendation to the presentment agency pursuant to
2 subdivision six of this section. Nothing in this section shall prohibit the probation service or the
3 court from directing a respondent to obtain employment and to make restitution from the earnings
4 from such employment. Nothing in this section shall prohibit the probation service or the court
5 from directing an eligible person to complete an education reform program in accordance
6 with section four hundred fifty-eight-1 of the social services law.

7 3. The probation service shall not adjust a case in which the child has allegedly committed a
8 designated felony act unless it has received the written approval of the court and the victim or
9 victims.

10 4. The probation service shall not adjust a case in which the child has allegedly committed a
11 delinquent act which would be a crime defined in section 120.25, (reckless endangerment in the
12 first degree), subdivision one of section 125.15, (manslaughter in the second degree), subdivision
13 one of section 130.25, (rape in the third degree), subdivision one of section 130.40, (criminal
14 sexual act in the third degree), subdivision one or two of section 130.65, (sexual abuse in the first
15 degree), section 135.65, (coercion in the first degree), section 140.20, (burglary in the third
16 degree), section 150.10, (arson in the third degree), section 160.05, (robbery in the third degree),
17 subdivision two, three or four of section 265.02, (criminal possession of a weapon in the third
18 degree), section 265.03, (criminal possession of a weapon in the second degree), or section 265.04,
19 (criminal possession of a dangerous weapon in the first degree) of the penal law where the child
20 has previously had one or more adjustments of a case in which such child allegedly committed an
21 act which would be a crime specified in this subdivision unless it has received written approval
22 from the court, the victim or victims and the appropriate presentment agency.

23 § 3 Subdivision 5 of section 375.1 of the family court act, as added by chapter 920 of the laws of
24 1982, is amended to read as follows:

25 5. Upon completion of the adjustment period as indicated in section 308.1(9) of this act, if the
26 probation service adjusts a delinquency case it shall serve a certification of such disposition
27 upon the appropriate police department or law enforcement agency which indicating whether the
28 subject complied with the terms of such adjustment services, upon receipt thereof, shall comply
29 with the provisions of subdivision one in the same manner as is required thereunder with respect
30 to an order of a court.

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1 Section 381.1 of the family court act, as added by chapter 920 of the laws of 1982, is amended to
2 read as follows:

3 381.1. Transfer of records and information to institutions and agencies.

4 1. Whenever a person is placed with an institution suitable for placement of a person adjudicated
5 a juvenile delinquent maintained by the state or any subdivision thereof or to an authorized
6 agency including the division for youth, the family court placing such person shall forthwith
7 transmit a copy of the orders of the family court pursuant to sections 352.1 and 352.2 and of
8 the probation report and all other relevant evaluative records in the possession of the family court
9 and probation department related to such person, including but not limited to any diagnostic,
10 educational, medical, psychological and psychiatric records with respect to such person to such
11 institution or agency, notwithstanding any contrary provision of law.

12 2. For any defendant appearing before the youth part of the superior court, the family court shall,
13 upon request of the youth part judge, forward a copy of all previous family court records created
14 under article three of this act relating to such defendant in order to assist the youth part's
15 determination as to whether to remove a case to family court, including, notwithstanding any
16 contrary provision of law, whether the case was sealed pursuant to section 375.1(1) of this act
17 based on a disposition defined in section 375.1(2)(a), (b), (c), (f), (d), (g), (h), (i). Such records
18 shall include any records created by probation services in accordance with 308.1 of this act. The
19 chief administrator of the unified court system shall create an electronic sharing mechanism to
20 ensure secure, timely, and efficient access between the family court and youth part, as well as to
21 the prosecutor on the youth part case, and the defense.

22 3. Whenever a person subject to this act has been arrested, the family court shall promptly make
23 any, and all previous family court records created under article three of this act related to that
24 person available to the probation services for the purpose of determining whether the person is
25 eligible for adjustment services, including, notwithstanding any contrary provision of law, whether
26 the case was sealed pursuant to section 375.1(1) of this act based on a disposition defined in section
27 375.1(2)(a), (b), (c), (d), (f), (g), (h), (i). An electronic sharing mechanism shall be created
28 between the family court and probation services to ensure secure, timely, and efficient access to
29 such records.

30 § 4. Section 381.3 of the family court act, as added by chapter 920 of the laws of 1982, paragraph
31 (b) as amended by chapter 926 of the laws of 1982, is amended to read as follows:

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1 § 381.3. Use of police records. 1. All police records relating to the arrest and disposition of any
2 person under this article shall be kept in files separate and apart from the arrests of adults and
3 shall be withheld from public inspection. For purpose of this section, “public inspection” does not
4 mean a presentment agency in family court, a law enforcement agency responsible for the subject
5 criminal investigation, probation services, or any agency designated in section 720.35(2) of the
6 criminal procedure act.

7 2. Notwithstanding the provisions of subdivision one, the family court in the county in which the
8 petition was adjudicated may, upon motion and for good cause shown, order ~~[such]~~ any and all
9 previous family court records open,

10 (a) to the respondent or his parent or person responsible for his care; or

11 (b) if the respondent is subsequently convicted of a crime, to a judge of the court in which he
12 was convicted, unless such record has been sealed pursuant to section 375.1, except for a
13 disposition defined in section 375.1(2)(a), (b), (c), (d), (f), (g), (h), (i).

14 3. An order issued under subdivision two must be in writing.

15 § 5. Section 722.21 of the criminal procedure law, as added by chapter 59 of the laws of 2017, is
16 amended to read as follows:

17 § 722.21 Proceedings upon felony complaint; adolescent offender.

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

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

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

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

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

11 (c) If there is not reasonable cause to believe that the defendant committed any criminal act, the
12 court must dismiss the felony complaint and discharge the defendant from custody if he is in
13 custody, or if he is at liberty on bail, it must exonerate the bail.

14 4. Notwithstanding the provisions of subdivisions two and three of this section, where the
15 defendant is charged with a felony, other than a class A felony defined outside article two hundred
16 twenty of the penal law, a violent felony defined in section 70.02 of the penal law or a felony listed
17 in paragraph one or two of subdivision forty-two of section 1.20 of this chapter, except as provided
18 in paragraph (c) of subdivision two of section 722.23 of this article, the court ~~[shall]~~, upon notice
19 from the district attorney that he or she will not file a motion to prevent removal pursuant to section
20 722.23 of this article, and upon consideration of the criteria specified in subdivision two of section
21 722.22 of this article, may, but is not required to, order transfer of an action against an adolescent
22 offender to the family court pursuant to the provisions of article seven hundred twenty-five of this
23 title. ~~[-, provided, however, notwithstanding]~~ Notwithstanding any other provision of law, section
24 308.1 of the family court act shall apply to actions transferred pursuant to this subdivision and
25 such actions shall not be considered removals subject to subdivision thirteen of such section 308.1.

26 5. Notwithstanding subdivisions two and three of this section, at the request of the district attorney,
27 the court ~~[shall]~~ may, but is not required to, order removal of an action against an adolescent
28 offender charged with an offense listed in paragraph (a) of subdivision two of section 722.23 of
29 this article, to the family court pursuant to the provisions of article seven hundred twenty-five of
30 this title and upon consideration of the criteria specified in subdivision two of section 722.22 of
31 this article, it is determined that to do so would be in the interests of justice. Where, however, the

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1 felony complaint charges the adolescent offender with murder in the second degree as defined in
2 section 125.25 of the penal law, rape in the first degree as defined in subdivision one of section
3 130.35 of the penal law, criminal sexual act in the first degree as defined in subdivision one of
4 section 130.50 of the penal law, or an armed felony as defined in paragraph (a) of subdivision
5 forty-one of section 1.20 of this chapter, a determination that such action be removed to the family
6 court shall, in addition, be based upon a finding of one or more of the following factors: (i)
7 mitigating circumstances that bear directly upon the manner in which the crime was committed;
8 or (ii) where the defendant was not the sole participant in the crime, the defendant's participation
9 was relatively minor although not so minor as to constitute a defense to the prosecution; or (iii)
10 possible deficiencies in proof of the crime. In determining whether an action be removed to the
11 family court, the court may also consider the factors provided for in subdivision two of section
12 722.22 of this article.

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

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

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

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

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

30 § 6. Subdivision 2 of section 722.22 of the criminal procedure law, as added by chapter 59 of the
31 laws of 2017, is amended to read as follows:

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

3 The nature and history of any previous matters pertaining to the individual in Family Court or
4 Youth Court;

5 (a) the seriousness and circumstances of the offense;

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

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

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

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

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

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

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

16 (i) any other pending charges against the individual;

17 (j) whether the individual was an active participant in the crime; whether the individual is liable
18 through accessorial conduct as defined in section 20.00 of the penal law;

19 ~~(k)~~ (k) any other relevant fact indicating that a judgment of conviction in the criminal court
20 would serve no useful purpose~~.; and~~

21 (l) or any other factor the court deems relevant to its determination.

22 § 7. Section 722.23 of the criminal procedure law, as added by chapter 59 of the laws of 2017, is
23 amended to read as follows:

24 § 722.23 Removal of adolescent offenders to family court.

25 1. (a) Following the arraignment of a defendant charged with a crime committed when he or she
26 was sixteen, or ~~commencing October first, two thousand nineteen,~~ seventeen years of age, other
27 than any class A felony except for those defined in article two hundred twenty of the penal law, a
28 violent felony defined in section 70.02 of the penal law or a felony listed in paragraph one or two
29 of subdivision forty-two of section 1.20 of this chapter, or an offense set forth in the vehicle and
30 traffic law, the court ~~shall~~ may, but is not required to, order the removal of the action to the family
31 court in accordance with the applicable provisions of article seven hundred twenty-five of this title.

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1 ~~[unless,]~~ In determining whether the action will be removed to the family court on the court's own
2 initiative, the court shall consider the criteria specified in subdivision two of section 722.22 of this
3 article. Should the court determine that removal is warranted, within thirty calendar days of ~~[such]~~
4 the arraignment, the district attorney ~~[makes]~~ may make a motion to prevent removal of the action
5 pursuant to this subdivision. In all cases in which the court orders removal to the family court, the
6 court shall provide an explanation, not in conclusory terms, for its determination on the record and
7 in writing. If the defendant fails to report to the probation department as directed, the thirty-day
8 time period shall be tolled until such time as he or she reports to the probation department.

9 (b) A motion to prevent removal of an action in youth part shall be made in writing and upon
10 prompt notice to the defendant. The motion shall contain allegations of sworn fact based upon
11 personal knowledge of the affiant, and shall indicate if the district attorney is requesting a hearing.
12 The motion shall be noticed to be heard promptly.

13 (c) The defendant shall be given an opportunity to reply. The defendant shall be granted any
14 reasonable request for a delay. Either party may request a hearing on the facts alleged in the motion
15 to prevent removal of the action. The hearing shall be held expeditiously.

16 (d) ~~[The court shall deny the motion to prevent removal of the action in youth part unless the~~
17 ~~court makes a determination upon such motion by the district attorney that extraordinary~~
18 ~~circumstances exist that should prevent the transfer of the action to family court.]~~ The court shall
19 determine if the action is removed to the family court. The court shall consider the criteria specified
20 in subdivision two of section 722.22 of this article before making its determination.

21 (e) The court shall make a determination in writing ~~[or]~~ and on the record within five days of
22 the conclusion of the hearing or submission by the defense, whichever is later. Such determination
23 shall include findings of fact and to the extent practicable conclusions of law.

24 (f) For the purposes of this section, there shall be a presumption against custody and case
25 planning services shall be made available to the defendant.

26 (g) Notwithstanding any other provision of law, section 308.1 of the family court act shall apply
27 to all actions transferred pursuant to this section provided, however, such cases shall not be
28 considered removals subject to subdivision thirteen of such section 308.1.

29 (h) Nothing in this subdivision shall preclude, and a court may order, the removal of an action
30 to family court where all parties agree or pursuant to this chapter.

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1 2. (a) Upon the arraignment of a defendant charged with a crime committed when he or she was
2 sixteen or ~~[; commencing October first, two thousand nineteen,]~~ seventeen years of age on a class
3 A felony, other than those defined in article 220 of the penal law, or a violent felony defined in
4 section 70.02 of the penal law, the court shall schedule an appearance no later than six calendar
5 days from such arraignment for the purpose of reviewing the accusatory instrument pursuant to
6 this subdivision. The court shall notify the district attorney and defendant regarding the purpose
7 of such appearance.

8 (b) Upon such appearance, the court shall review the accusatory instrument and any other
9 relevant facts for the purpose of making a determination pursuant to paragraph (c) of this
10 subdivision. Both parties may be heard and submit information relevant to the determination.

11 (c) ~~[The court shall order the action to proceed in accordance with subdivision one of this section~~
12 ~~unless, after reviewing the papers and hearing from the parties, the court determines in writing~~
13 ~~that]~~ Other than any class A felony except for those defined in article two hundred twenty of the
14 penal law, a violent felony defined in section 70.02 of the penal law or a felony listed in paragraph
15 one or two of subdivision forty-two of section 1.20 of this chapter, or an offense set forth in the
16 vehicle and traffic law, the court may, but is not required to, order removal after considering the
17 criteria specified in subdivision two of section 722.22 of this article provided, however, that the
18 court shall not order removal if the district attorney proved by a preponderance of the evidence
19 one or more of the following as set forth in the accusatory instrument:

20 (i) the defendant caused or actively participated in a crime that caused significant physical injury
21 to a person other than a participant in the offense; or crime in accordance with accessorial conduct
22 as defined in section 20.00 of the penal law or actively participated in a crime through accessorial
23 conduct as defined in section 20.00 of the penal law; or

24 (ii) the defendant ~~[displayed]~~ possessed a firearm, shotgun, rifle or deadly weapon as defined in
25 the penal law ~~[in furtherance of such offense]~~ or possessed what appeared to be a firearm, shotgun,
26 rifle or deadly weapon as defined in the penal, or actively participated in a crime where a co-
27 defendant possessed or a firearm, shotgun, rifle or deadly weapon as defined in the penal or where
28 a co-defendant possessed what appears to be a firearm, shotgun, rifle or deadly weapon as defined
29 in the penal law; or

30 (iii) the defendant unlawfully engaged in sexual intercourse, oral sexual conduct, anal sexual
31 conduct or sexual contact as defined in section 130.00 of the penal law.

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1 (d) ~~[Where the court makes a determination that the action shall not proceed in accordance with~~
2 ~~subdivision one of this section, such]~~ The court's determination of whether the action shall proceed
3 or be removed to the family court shall be made in writing ~~[or]~~ and on the record and shall include
4 findings of fact and to the extent practicable conclusions of law.

5 (e) Nothing in this subdivision shall preclude, and the court may order, the removal of an action
6 to family court where all parties agree or pursuant to this chapter.

7 3. Notwithstanding the provisions of any other law, if at any time one or more charges in the
8 accusatory instrument are reduced, such that the elements of the highest remaining charge would
9 be removable pursuant to subdivisions one or two of this section, then the court, sua sponte or in
10 response to a motion pursuant to subdivisions one or two of this section by the defendant, shall
11 promptly notify the parties and direct that the matter proceed in accordance with subdivision one
12 of this section, provided, however, that in such instance, the district attorney must file any motion
13 to prevent removal within thirty days of effecting or receiving notice of such reduction.

14 4. A defendant may waive review of the accusatory instrument by the court and the opportunity
15 for removal in accordance with this section, provided that such waiver is made by the defendant
16 knowingly, voluntarily and in open court, in the presence of and with the approval of his or her
17 counsel and the court. An earlier waiver shall not constitute a waiver of review and the opportunity
18 for removal under this section.

19 § 8. Section 725.15 of the criminal procedure law, as amended by chapter 7 of the laws of 2007,
20 is amended to read as follows:

21 § 725.15 Confidentiality of records

22 1. Except where specifically required or permitted by statute or upon specific authorization of the
23 court that directed removal of an action to the family court all official records and papers of the
24 action up to and including the order of removal ~~[, whether]~~ on file with the court ~~[, a police agency~~
25 ~~or the division of criminal justice services,]~~ are confidential and shall be withheld from public
26 inspection~~[, provided however that]~~. Where the chief administrator of the courts notifies
27 electronically, or otherwise, to the heads of all appropriate police departments, other law
28 enforcement agencies, and the commissioner of the division of criminal justice services that an
29 action has been removed to family court, such notification shall not be designated as though the
30 action has resulted in sealing, nor shall such notification direct the sealing of such records to the
31 recipient agencies. The availability of copies of any such records and papers on file with a police

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- 1 agency, the division of criminal justice services, or the family court shall be governed by
2 provisions that apply to family court records. [~~and further provided that~~]
- 3 2. [a]All official records and papers of the action shall be included in those records and reports that
4 may be obtained upon request by the commissioner of mental health or commissioner of the office
5 for people with developmental disabilities, as appropriate; the case review panel; and the attorney
6 general pursuant to section 10.05 of the mental hygiene law.
- 7 § 9. This act shall take effect immediately.

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