N.Y.S. DIVISION OF CRIMINAL JUSTICE SERVICES

FRANK J. ROGERS COMMISSIONER

JUVENILE JUSTICE REPORT

VOL. 1 NO. 3 | JUVENILE JUSTICE INSTITUTE | AUG. 1978

INTRODUCTION

This month's issue is exclusively devoted to a discussion of the mammoth Crime Package bill, *S.5-A/A.43*, introduced in the Extraordinary Session of the Legislature on July 14, 1978 by Senators Anderson, Ohrenstein, Barclay, and others, and by the Assembly Committee on Rules. The bill evolved out of legislation proposed late in the session by the Governor, and was signed into law by him on July 20, 1978 (Chapter 481 of the Laws of 1978). The Crime Package makes sweeping changes in the juvenile justice system and has enormous implications for all parties involved in both the juvenile justice and criminal justice systems. Most of the sections pertaining to the juvenile justice system will take effect on September 1, 1978. In brief, from that time on, 14- and 15-year-olds alleged to have committed the

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N.B. This bill was introduced and passed within a matter of days, late in the session; we received rough copies of it even later. Because of the complexity of the bill's provisions and their far-reaching importance, we felt it essential to provide our readers with an analysis in as short a time as possible. However, because legislative intent was at times difficult for us to discern, because those we rely on for aid in discerning legislative intent were unavilable due to the press of other legislative business, and because we were under time pressures ourselves, there may be ambiguities in the bill which we have either failed to clarify or erroneously interpreted. For this, we apologize. If necessary, we will publish a supplement to correct mistakes in our discussion of the new law, and to keep readers abreast of developments arising from its implementation. Only those provisions of the bill which deal with the juvenile justice system are discussed in this newsletter; even then, not every section is mentioned. See the bill itself for all details. Pages 15-16 of the REPORT contain charts listing all sections of the Penal Law, Criminal Procedure Law, Family Court Act, and Executive Law that were amended, repealed, or added by the bill, the section of the bill which does so, and the page(s) of the REPORT, if any, where the changes are discussed.

most serious and violent felonies, and 13-year-olds alleged to have committed murder in the second degree, will be sent to and tried in the adult criminal courts, and will be subject to adult-type prison sentences. However, sentences for juveniles will not be as severe as they would be for adults found guilty of the same crimes. Although treated as adults, and receiving all due process rights adults have, such as jury trials, juveniles sentenced by the criminal courts will serve the first part of their terms, up to age 21, in secure facilities run by the Division for Youth (DFY), in whose custody adjudicated juvenile delinquents are placed. Transfer will be made to Department of Corrections (DOCS) facilities upon the juvenile's 21st birthday, should his or her sentence extend that long. In certain circumstances, transfer may occur at as early as 16 years.

New York is now one of a group of states that, rather than waiving its juveniles to the adult system, starts them out in that system. In effect, the bill lowers the age of criminal responsibility to 14 for an enumerated class of felonies, and to 13 for murder 2d. Provision is made, however, for removal of these cases to the family court in certain instances after certain procedures are followed. Removal can be ordered at any time during the course of a case's progress through the adult system, even after a trial verdict of guilty has been reached.

S.5-A/A.43 makes extensive amendments of and additions to the Penal Law, Criminal Procedure Law, Family Court Act and Executive Law. Besides revolutionizing the juvenile justice system, the bill also toughens the procedures of the criminal justice system. It should be noted that despite the changes made by this bill, new provisions in the Family Court Act and Executive Law made by other bills passed during the 1978 session (see July issue of the JUVENILE JUSTICE REPORT) will still obtain, and the changes in the designated felony procedure of family court will go into effect as provided in the bills.

Discussion of *S.5-A/A.43* will be from this approach: First, a brief description of the criminal justice system's newly acquired jurisdiction over juveniles; then two sections, one detailing how the bill envisions a juvenile offender case progressing through the criminal justice system, to sentencing; the other section enumerating the various points at which and conditions under which removal to family court can be made; and finally, a section on miscellaneous changes in the laws made by the bill.

JURISDICTION OF THE CRIMINAL COURTS OVER JUVENILES

Only certain 13-, 14-, and 15-year-olds, to be known as "juvenile offenders," will be subject to the criminal justice system's processes. The term, "juvenile offender," defined in the bill, will appear in §10 of the Penal Law (PL) and in §1.20 of the Criminal Procedure Law (CPL). The definition will also be incorporated in the definition of "infancy" in §30 of the PL and in the list of crimes for which a grand jury can indict a person under 16, to be

contained in a new section, 190.71, of the CPL. The necessary change in the definition of "juvenile delinquent" is covered by an amendment of §712 of the Family Court Act (FCA).

The class of juvenile offenders corresponds roughly to the class of designated felony offenders given special treatment in the juvenile justice system. However, whereas Chapter 478 of the Laws of 1978 (S 10338/A 12996) expanded the definition of designated felony offenders to include 13-year-olds found to have committed any of a large number of designated felony acts (see July issue of the JUVENILE JUSTICE REPORT), the class of juvenile offenders will contain only those 13-year-olds who have committed murder 2d. Fourteen- and 15-year-olds, however, who commit designated felony acts, will now be considered to have committed juvenile offender acts, and will thus go, at least initially, into the adult courts. The designated felony offender category will then consist of those 13-year-olds who have committed any designated felony acts except murder 2d, and those 14- or 15-year-olds whose cases are removed as designated felony cases or after removal, are found to have committed designated felony acts.

In addition to the designated felony acts of kidnapping 1st, arson 1st, manslaughter 1st, rape 1st, sodomy 1st, arson 2d and robbery 1st, juvenile offender acts also include burglary 1st and 2d, and robbery 2d, when committed by a 14- or 15-year-old.* These crimes are not designated felony acts. The list of felonies for which a juvenile offender is criminally responsible does not include the designated felonies murder 1st and kidnapping 2d.

PROGRESS OF A JUVENILE OFFENDER CASE THROUGH THE CRIMINAL COURT SYSTEM

ARRAIGNMENT AND BAIL

Preliminary procedures for juvenile offenders are covered by a new section of the CPL, §180.75. No amendments have been made to sections of the CPL concerning arrest and initial arraignment. Section 180.75 indicates that a juvenile offender may be arraigned before a local criminal court; presumably juveniles will be be arraigned in the same manner as adults. Choices open to the arraigning local criminal court judge would be to release the juvenile on his or her own recognizance pending a preliminary hearing, to set bail, or to deny bail and commit the juvenile to the custody of the sheriff pending the preliminary hearing. However, in the last instance, according to the new §510.15 of the CPL added by the bill, the sheriff would be obligated to take the juvenile to a place designated by the Division for Youth (DFY) as a juvenile detention facility; that is probably, to the same place juveniles subject to Family Court Act procedures are kept. It should be noted that, under §739 of the FCA, preventive detention is permissible; that is, detention may be ordered for juveniles if there is a serious risk that the juvenile, if released, may commit a crime before the date of return to court. With adults, however, statutory authority for preventive detention is lacking. The need to insure that the defendant will appear at the next court date is

*Only parts of Assault 1°, Rape 1°, Sodomy 1°, Burglary 2° and Robbery 2° are juvenile offender felonies (see actual bill).

supposed to be the sole criterion the court is to evaluate in setting or denying bail. The adult standard would obtain for alleged juvenile offenders.

PRELIMINARY HEARING

Once a juvenile offender is arraigned, new CPL §180.75 provides that a preliminary hearing is to be held, as it is for adults accused of felonies, to establish reasonable cause to believe that the defendant committed one of the enumerated juvenile offender crimes. However, the juvenile offender may waive such a hearing, as may an adult. If that occurs, the case is to be promptly transmitted to the superior court, which handles felony complaints, for submission to the grand jury. If a hearing is held by the local criminal court, one of the results may ensue. If there is no reasonable cause to believe that any criminal act was committed, the case must be dismissed; and the defendant is discharged from custody and or bail is exonerated. If there is reasonable cause to believe that a crime was committed, but not a crime for which the juvenile is criminally responsible, then the case is to be removed to family court, where fact-finding and dispositional hearings will be held. Removal may also be ordered at any time up to indictment, on motion of the court or of any party. (Removal will be fully discussed on pages 7-12 of the REPORT.) If reasonable cause is found to believe that a juvenile offense was committed by the juvenile, the case is sent to the superior court for action by the grand jury.

GRAND JURY ACTION

Under the terms of CPL §190.71, newly added by the bill, the grand jury may indict a juvenile only for the enumerated crimes for which a 13-, 14- or 15-year-old is responsible. If the grand jury finds that the juvenile did not commit such an act, but did commit an other crime for which the juvenile may be adjudicated a juvenile delinquent, the grand jury can vote to remove the case to family court, specifying the act it believes the juvenile committed and the time and place of its commission. The grand jury can vote to remove only if the evidence before it is legally sufficient to establish that the juvenile did a juvenile delinquency type of act, and if competent and admissible evidence before it provides reasonable cause to believe the juvenile did such an act. This evidentiary standard is the same as that required for the grand jury to indict an adult defendant.

The bill amends §190.60 of the CPL to provide that the grand jury may direct the district attorney to file a removal request, as provided in the aforementioned §190.71.

Another option open to the grand jury besides indictment for a juvenile offense or vote to request removal, would be to dismiss the charge as provided in §190.60.

GUILTY PLEAS

Upon indictment for a juvenile offense, the case would proceed to trial, unless the defendant wished to plead guilty. Section 220.10 of the CPL is substantially amended by the bill to prescribe strict rules concerning the procedures to be followed in accepting a plea of guilty to an indictment charging a juvenile offense. Fourteen- and 15-year-olds indicted for murder 2d may plead guilty only to crimes for which they are criminally responsible. Fourteen- and 15-year-olds indicted for any other juvenile offenses besides murder 2d and 13-year-olds, who may be held criminally responsible and indicted only for murder 2d, can, under certain circumstances, plead guilty to crimes for which they are not criminally responsible, if the district attorney so recommends, in which instance the case is removed to family court for a dispositional hearing. The plea of guilty is held to be equivalent to a finding of juvenile delinquency.

LIMITS ON PLEA BARGAINING

If the district attorney does not recommend removal of the case to family court, then the juvenile may plead guilty only to a crime for which juveniles are criminally responsible. Another provision of the bill, amending §220.30 of the CPL, limits the plea bargaining possibilities available to defendants indicted for juvenile offenses. Juveniles who have been indicted for more than one crime may not plead guilty to an offense for which they are not criminally responsible in part of the indictment, to cover the whole indictment, nor may they plead guilty to such non-juvenile offender acts in one indictment to cover multiple indictments outstanding against them.

TRIAL AND JURY VERDICTS

If no pleas or removal occurs up to this point, the case goes to trial. Regular trial procedures pertaining to adult defendants would presumably obtain for juvenile offenders, since no amendments are made by the bill to sections of the CPL dealing with trials.

Section 300.50 of the CPL is amended by the bill to provide that if an indictment charges a juvenile offender crime that contains a lesser included offense for which the juvenile would not be criminally responsible, that lesser included offense may still be submitted to the jury to decide on. However, under the terms of a new section of the CPL, §310.85, added by the bill, a verdict of guilty of such a lesser included offense or of any other offense for which a juvenile is not criminally responsible, would lead either to removal of the case to the family court for disposition, or to the verdict being deemed null. The latter result would occur either if the juvenile is also found guilty of a crime for which juveniles are criminally responsible, or if he or she has been found guilty in another case of a juvenile offender crime, and is waiting to be sentenced on that conviction or is already under a prison sentence for that conviction. In such circumstances, the verdict of guilty for a non-juvenile offender act is to be set aside and deemed a nullity. In all other instances, that is, even when a verdict of guilty of a crime for which juveniles are not

criminally responsible is the sole verdict of the case, or the juvenile has no other criminal convictions involving sentence, then the case is to be removed to family court. In that instance, the verdict is to be deemed vacated and is to be replaced by a fact-finding of juvenile delinquency. Thus the case enters the family court ready for a dispositional hearing.

Should the jury find the defendant guilty of an offense for which juveniles are criminally responsible, the provisions of the new section, 330.25 of the CPL, as added by the bill, would apply. Even in this turn of events, removal to family court for disposition is still possible, if certain requirements are met (see page 7), if the conviction is for anything but murder 2d, and the interests of justice would thereby be served. Upon removal to family court, the case enters at the point of the dispostional hearing. Where there has been a conviction for murder 2d, the case must remain in the adult court for sentencing.

SENTENCING

Juvenile found guilty of or who plead guilty to offenses for which they are criminally responsible are subject to the sentencing stipulations of PL sections amended and added by the bill. New section 70.05 sets the maximum and minimum periods of imprisonment for convicted juvenile offenders, who are to be given indeterminate sentences. These sentences are less harsh than those imposed on adults found guilty of the same crimes, but generally would result in longer periods of incarceration than is available under the dispositional alternatives of the family court. A conviction of murder 2d carries a minimum of 5-9 years and a maximum of life imprisonment; the criminal court, in its discretion, could impose any minimum sentence within those bounds, as for examples, 5 to life or 8 to life. The juvenile offender crimes of kidnapping 1st and arson 1st, both A felonies, are punishable by a minimum of 4 to 6 years and a maximum of 12 to 15 years. With both Class B and C felonies for which juveniles are criminally responsible, the minimum sentences are to be one-third of the maximum imposed; maximums must be at least three years. For B felonies, the maximum is fixed by the court and may be up to 10 years; for C felonies, seven years is the top maximum sentence the court can impose.

LIMITS ON CONSECUTIVE SENTENCING

Where juvenile offenders are convicted for two or more crimes, and consecutive sentencing comes into play, the provisions of newly amended PL §70.30 apply. If the crimes for which the juvenile has been convicted do not include an A felony, consecutive sentences may not exceed an aggregate maximum of 10 years. Where one conviction was for either of the class A felonies of arson 1st or kidnapping 1st, the aggregate maximum sentence can not exceed 15 years. The aggregate minimum term of imprisonment, where the aggregate maximum has had to be reduced to 10 or 15 years, is to be deemed to be half of the reduced aggregate maximum if the aggregate minimum exceeds half the aggregate maximum. That is five years aggregate minimum where no class A felonies were involved, and seven and one-half years where there was a conviction of arson 1st or kidnapping 1st. Where a conviction of murder 2d, which

carries a life imprisonment maximum, has been obtained, there will be no reduction in sentence in the case of a second conviction.

PLACEMENT OF CONVICTED JUVENILE OFFENDERS

Convicted juvenile offenders are to be housed in secure facilities run by DFY. Section 70.05 of the PL, newly added to the bill, directs that juvenile offenders be committed to the custody of the Director of DFY, who is to place such juveniles in secure facilities. All time spent there is credited toward the fulfillment of the juvenile's sentence. To the Executive Law, which covers the operations of DFY, the bill adds a new section, 515-b, dealing with juvenile offenders. According to that section, the secure facilities to be used by DFY for juvenile offenders are to provide all appropriate services. Juvenile offenders remain with DFY till 21 years of age, if their sentence extends to that time. At that point, if they have not completed their sentence, juvenile offenders are transferred to DOCS, which will incarcerate them in its facilities.

Juvenile offenders may be transferred to DOCS prior to their 21st birthday. In order to effect this transfer, in the case of 16- to 18-year-olds, DFY must apply to the sentencing court. The youth is to be notified and may be heard and represented by counsel on this matter. The court's decision to permit transfer must be based on its conclusions that there is no substantial likelihood that the youth will benefit from DFY services. For those 18 to 21 years old, transfer from DFY to DOCS is easier to arrange. DFY need only certify to DOCS that no substantial likelihood exists of benefit to the person from DFY programs. While juvenile offenders are in DFY facilities, they are to be subjected to DFY rules and regulations, except as to matters of parole, temporary release and discharge. In these matters, laws governing adult inmates of prisons apply.

REMOVAL OF A JUVENILE OFFENDER CASE TO FAMILY COURT

Several points at which, under certain circumstances, juvenile offenders may be sent to family court, for fact-finding and/or dispositions, have already been mentioned. First, these points and circumstances will be repeated and elaborated upon; then there will be a description of the new article of the CPL, 725, which stipulates procedures to be followed when cases are removed. One of the consequences of removal pursuant to article 725 is that adjustment of such cases by probation intake is barred. The bill amends §734 of the FCA to deny adjustment when a case is removed to family court under article 725 of the CPL.

PRE-INDICTMENT REMOVAL

There is a general section providing for removal at any time after a juvenile offender complaint has been lodged against the juvenile up till the complaint is submitted to the grand jury. According to the new §180.75 of the CPL, added by the bill, the local criminal court may, in the interests of justice, order removal of any complaint except one charging murder 2d or an armed

felony*, when a motion for removal is made by any party or by the court on its own motion, regardless of whether a preliminary hearing has been waived or held. When it is the district attorney who requests removal of such a complaint, the court must grant the request if the interests of justice would thereby be served. Even where the complaint alleges murder 2d or an armed felony, the court can order removal, with the district attorney's consent, stated on the record, but only if a basis for removal can be established on one or more of these three grounds: (1) mitigating circumstances related to the manner of the commission of the crime; (2) defendant not having acted alone and his or her participation being relatively minor; or (3) deficiencies in proof. The court can make an inquiry if need be to determine whether a basis for removal exists. If removal is ordered, it is carried out according to CPL article 725 provisions; and fact-finding and dispositional hearings will then be held by family court.

REMOVAL AFTER PRELIMINARY HEARING

Removal may be effected after a preliminary hearing is held, according to the new CPL section, 180.75, created by the bill, if reasonable cause is established to believe that the defendant is a juvenile delinquent rather than a juvenile offender: that is, if the hearing does not show reasonable cause to believe an act for which a juvenile is criminally responsible was committed, but does demonstrate that there is reasonable cause to believe a crime other than one of the enumerated juvenile offender acts was committed. If so, then the court is to direct removal of the action to family court pursuant to the new CPL article 725, stating the act(s) there was reasonable cause to believe the juvenile committed. In family court, the fact-finding and dispositional hearings are to be held.

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*An armed felony is a newly created concept, defined in the bill's amendment of §1.20 of the CPL. An armed felony is a violent felony offense commission of which is accompanied either by display of what appears to be a firearm, or by possession of, being armed with, or causing serious physical injury with a deadly weapon readily capable of causing death or serious injury. A violent felony offense is another newly created category of felony, defined in the bill in a new section 70.02 of the PL. Violent felony offenses include a whole series of violent B, C , and D felonies: attempted murder 2d, attempted kidnapping 1st, attempted arson 1st, manslaughter 1st, rape 1st, sodomy 1st, kidnapping 2d, burglary 1st and 2d, arson 2d, robbery 1st and 2d, criminal possession of a weapon 1st and 2d, assault 1st, any attempts at any of the above-mentioned crimes, assault 2d, and sexual abuse 1st.

GRAND JURY REMOVAL

The next point in the process at which removal may be ordered is at the grand jury stage. CPL §190.71, newly created by the bill, enumerates the juvenile offender acts for which a grand jury may indict, given the sufficient evidence. Such offenses are the only ones for which a grand jury may indict a juvenile. If the grand jury does not find that the defendant committed one of the juvenile offender acts, it must dismiss the case; or, if it finds that evidence establishes that a defendant committed a crime which is not a juvenile offender act, the grand jury may vote to request removal to family court. The grand jury files this request through its foreman, noting the act it alleges the juvenile committed, and the time and place of commission. The court must grant this request unless it is facially improper or insufficient. The court's order directing removal must be in accordance with CPL article 725 procedures. Related to the provisions of this new CPL §190.71 is the amendment to §190.60 of the CPL, giving the grand jury an additional option in its list of possible actions: that of directing the district attorney to request removal of a case to family court, as §190.71 stipulates.

POST-INDICTMENT REMOVAL

Section 220.10 of the CPL is amended by the bill to provide for removal of a case after indictment of the defendant for a juvenile offense, under certain circumstances. Those circumstances are as follows: The district attorney recommends removal to family court, and submits a writing telling why this removal is recommended. Where the indictment charges the commission of an armed felony, the district attorney's determination must be based on one or more of these four factors: (1) mitigating circumstances related to the manner of the commission of the crime; (2) defendant not having acted alone and his or her participation being relatively minor; (3) deficiencies in proof; or (4) defendant never having been adjudicated, at any age, for any type of designated felony act, and it being likely that the instant crime will not be repeated. In addition, the district attorney's memorandum is to state how the interests of justice will be served by removal. Where the indictment does not charge an armed felony (or murder 2d) by a 14- or 15-year-old, then only the interests of justice rationale for removal need be indicated.

If the court accepts the district attorney's determination that the interests of justice will be served by removal, it can then accept a plea of guilty to an act for which the juvenile is not criminally responsible and direct the removal of the case to family court, where the plea will stand as a fact-finding of juvenile delinquency, and a dispositional hearing will be held.

POST-VERDICT REMOVAL

If the case goes to trial, removal could occur even after verdict. If the jury returns only a verdict of guilty for a crime for which juveniles are not criminally responsible, and no guilty verdict for a juvenile offense, and the juvenile is not awaiting or serving sentence on another criminal conviction, then the removal procedures of the bill's new CPL §310.85 would apply. The verdict would be set aside and replaced by a fact-finding of juvenile delinquency, with the court ordering removal to family court for disposition pursuant to article 725 of the CPL.

If the verdict of guilty is for a juvenile offender act which juveniles are criminally responsible for, removal could still be directed, according to the new CPL §330.25 added by the bill, if the conviction is for anything but murder 2d. This removal would be on motion and only with the district attorney's consent, upon the submission by the district attorney of a memorandum similar to the one described on page (9), required when a juvenile indicted for a juvenile offense wants to plead guilty to a non-juvenile offender act. The memo must state how the interests of justice would be served by removal; and if the conviction was of an armed felony, further support for removal must be shown based on one or more of three factors: (1) mitigating circumstances related to the manner of commission of the crime; (2) defendant not having acted alone and his or her participation being relatively minor; or (3) defendant never having been adjudicated, at any age, for a designated felony class of act and it being likely that the instant crime will not be repeated.

If the court decides, using only this memo of the district attorney, that the interests of justice would be served by removal, it will have the verdict set aside and substitute for it the juvenile's plea of guilty to a crime for which juveniles are not criminally responsible. This plea is to be deemed the equivalent of a finding on the facts of juvenile delinquency. Thus upon removal to family court, the case enters that system at the point of the dispositional hearing.

CPL ARTICLE 725

The new article 725 of the CPL created by the bill consists of the five sections 725.00 through 725.20. It details the technical requirements to be fulfilled when cases are removed. Section 725.05 mandates that the court's order of removal provide for removal to the family court of the same county in which the case was pending, and tell what section of the CPL is the basis for the removal. For a post-preliminary hearing removal or any removal before indictment, the order must tell the non-juvenile offender act(s) there is reasonable cause to believe were committed. A copy of the grand jury request to remove must accompany any removal order made because of grand jury action. Where removal is ordered post-indictment or post-verdict, the act(s) for which a guilty plea or verdict was entered must be stated.

If the local criminal or superior court which directed removal did not make a securing order stipulating whether the defendant was to be released on his or her own recognizance, or whether the bail was set in a certain amount or denied, the removal order must include either a direction that the juvenile be taken immediately to family court, if that is possible; or else must provide for release or detention of the juvenile. In any event, the removal order must set a specific date for the family court appearance, not later than the next family court session if the juvenile is in detention. Finally, the order must direct that all papers or copies of them be sent to the clerk of family court, including all minutes of any hearings, inquiries, trials, grand jury proceedings, or pleas.

In §725.10, it is stipulated that the removal order intitiates a Family Court Act article seven proceeding, with family court then assuming jurisdiction. Once that occurs, family court laws apply with respect to all further events in the case.

Section 725.15 provides that except where authorized or required by statute or the criminal court, all papers pertaining to a removed case, wherever on file (i.e., with the police or the Division of Criminal Justice Services), are confidential to the same extent as are other family court records.

Where the removal is made pre-indictment, on motion of the court or of any party; post-indictment; or post-verdict of guilty of a juvenile offender act; then the clerk of the superior court and the Division of Criminal Justice Services* is to receive a certified copy of the removal order, and the district attorney's interests of justice statement. In post-indictment removal, the plea minutes are to be provided as well. The superior court clerk is to keep two files on removed cases. In one, the papers are to have deleted from them portions identifying defendants. These papers can be inspected by the public. In the other confidential file, information is to be maintained so that a correlation between a paper and defendant can be made. No correlating information may be revealed except on superior court order based on the interests of justice.

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*The Division of Criminal Justice Services is to get these documents in order to fulfill its newly acquired statutory duties to keep and analyze data on removals. See page 14 for further explanation of this new duty.

FAMILY COURT ACTION ON REMOVED CASE

Amended §739 of the FCA provides that a CPL article 725 removal order is deemed to be based on probable cause that the juvenile is a delinquent. Thus no further probable cause inquiry is to be made by the family court when it gets the case. The removal order is deemed to be equivalent to a delinquency petition, according to amended §731 of the FCA. The list of usual originators of such petitions, contained in §733 of the FCA, would not be applicable in a removal case, under the terms of amended §733.

In conjunction with this change, the bill amends §734-a of the FCA, which requires the presenter of the petition, whether the corporation counsel, county attorney, or district attorney, to approve or reject a delinquency petition within 30 days. By virtue of the amendment, such action by the party presenting the petition is not required where the case is one which has been removed under article 725 of the CPL.

Amendments to §§744 and 746 of the FCA provide that all removals after indictment (with plea of guilty), or after verdict, are equivalent to proof beyond a reasonable doubt that the juvenile did the act(s) specified, and no further fact-finding is to be pursued--that is, the case goes straight to disposition. However, should the removal order leave any doubt as to the act(s) the juvenile committed, the court may hold a hearing to clarify the ambiguity.

The only function other than fact-finding and/or disposition that the family court performs, under amended §739 of the FCA, is its own determination on release or detention of the juvenile whose case has been removed. Setting of bail is not an option usually available to a family court. However, where the juvenile had been in criminal court and is not in detention, owing to the criminal court's having ordered release or set bail, requirements which were met by the juvenile, the family court can, besides ordering release or detention, continue the criminal court's decision, or do whatever that court might have done if the case has not been removed (i.e., set bail). The family court, in making its determination, can use as a criterion, besides the need to insure that the juvenile will reappear at the next court date, also the ground of preventive detention. Preventive detention is not a statutorily permitted basis for a criminal court to use in making a bail decision for adult defendants.

MISCELLANEOUS

COUNSEL RESPONSIBLE FOR A REMOVED CASE

Two sections of the FCA are amended to provide for continuity of counsel when a case is removed. An amendment of §254-a of the FCA (which section was created only this year by Chapter 512 of the Laws of 1978, *S 8330/A 10897* (see July issue of REPORT)), gives the district attorney the option to present delinquency petitions in

family court if the juvenile involved has been a defendant in a criminal court whose case was then removed. Section 249 of the FCA is amended to require that if possible, the family court is to assign as law guardian to a juvenile whose case was removed, the same lawyer who represented that juvenile in criminal court before the case was removed.

EFFECT OF A JUVENILE OFFENDER CONVICTION OR DESIGNATED FELONY FINDING ON SUBSEQUENT CONVICTIONS

Juveniles who have been convicted as juvenile offenders or who have been found to be designated felony offenders in family court can, under the terms of the bill, be analogized to prior felony offenders. The new PL §60.10 contains the provisions making those who were convicted as juvenile offenders eligible for predicate felon sentencing if they are convicted of a felony after their 16th birthday. Thus the special sentencing treatment applicable to predicate felons could be imposed on former juvenile offenders.

As for designated felony offenders, amended CPL §720.10 bars them from receiving youthful offender treatment, if they are later convicted for a felony. Youthful offender treatment is otherwise available to 16- to 19-year-olds convicted for most felonies. A 16- to 19-year-old with a prior felony conviction cannot get youthful offender treatment; with this amendment, the family court adjudication as a designated felony offender would be held against youths in the same way, making them ineligible for the lenient treatment youthful offenders obtain. Of course, this would also hold true for convicted juvenile offenders, whose conviction puts them in a predicate felon class ineligible for youthful offender status on subsequent conviction between the ages of 16 and 19.

RESPONSIBILITIES OF DIVISION FOR YOUTH

Since the provisions of new §510.15 of the CPL provide that detained juvenile offenders will be taken to a DFY certified secure juvenile detention facility (see page 7), §510-a of the Executive Law(EL) is amended by the bill to conform the definition of "detention" to include the care and maintenance of children under 16 held pursuant to a criminal court order. Another subdivision of §510-a, which provides that each social services district may run secure and non-secure detention facilities for juvenile delinquents and PINS, is amended to conform as well, so that the social services district's secure facilities may be used for the detention of alleged juvenile offenders. Amended §530 of the EL provides for reimbursement by the State to social services districts for the costs of detention of alleged juvenile offenders.

Under the terms of further amendments of §510-a of the EL, DFY is to inspect and certify all facilities used to house juveniles detained under criminal court order, and is to notify counsel for an alleged juvenile offender of any violation of law relating to his or her detention. DFY is also to provide clerks of all

local and superior criminal courts with a list of facilities it has certified available for detention of alleged juvenile offenders.

As to convicted juvenile offenders, amended §515-b of the EL gives DFY the responsibility to maintain secure facilities for their care. These facilities are to offer all appropriate services, such as education, job training and counseling, and medical and mental health treatment. In addition, the amended section mandates that as long as a convicted juvenile offender is in DFY custody, DFY is to make a written report to the sentencing court and district attorney, at least semi-annually, to keep them abreast of the juvenile offender's status and progress.

RESPONSBILITIES OF DIVISION OF CRIMINAL JUSTICE SERVICES

Under amended §837-a of the EL, the Division of Criminal Justice Services (DCJS) is given several added duties, including that of making reports on the workings of the new laws. DCJS is to collect and analyze all papers forwarded to it that deal with the reasons a juvenile offender case was removed to family court. The papers DCJS will be sent to further that record-keeping function, include removal memoranda prepared by the district attorney (see page 9).

MAJOR VIOLENT OFFENSE TRIAL PROGRAM

The bill establishes a program giving additional financial resources to the courts and local criminal justice agencies in order to assure quicker and more effective processing of certain cases. Those cases are ones which involve major violent A, B, and C felonies; handicapped or elderly victims; defendants with long conviction records; or defendants who have been in detention or on bail long enough to approach speedy trial limits. Since the crimes alleged juvenile offenders are accused of committing may fit into the specifications of a major violent offense, their cases may be processed and tried through this new program. Special trial parts will be set up with the funds; some of the money will go to pay prosecution, defense, and probation costs.

SECTION OF LAW AFFECTED	SECTIONS OF CHAPTER 481 OF LAWS OF 1978 AMENDED	ADDED	REPEALED	RELETTERED/ RENUMBERED	JJR PAGE #
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60.05(2)	1				
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70.06(1)(a)	5				
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*10.00(18)		27			2
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220.30(3)(b)(iv)	16				
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*220.10(5)(h)		37			5,9

SECTION OF LAW AFFECTED	SECTION OF CHAPTER 481 OF LAWS OF 1978 AMENDED	ADDED	REPEALED	RELETTERED/ RENUMBERED	JJR PAGE #
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*220.30(3)(c)		39			5
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*Section refers to the Juvenile Justice System

Published by the State of New York, Juvenile Justice Institute, Division of Criminal Justice Services, 80 Centre Street, New York, N.Y. 10013

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