

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

[McKinney's Consolidated Laws of New York Annotated](#)  
[Criminal Procedure Law \(Refs & Annos\)](#)  
[Chapter 11-a. Of the Consolidated Laws \(Refs & Annos\)](#)  
[Part Three. Special Proceedings and Miscellaneous Procedures](#)  
[Title U. Special Proceedings Which Replace, Suspend or Abate Criminal Actions](#)  
[Article 722. Proceedings Against Juvenile Offenders and Adolescent Offenders; Establishment of Youth Part and Related Procedures](#)

McKinney's CPL § 722.20  
§ 722.20 Proceedings upon felony complaint; juvenile offender  
Effective: October 1, 2019  
[Currentness](#)

1. When a juvenile 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 juvenile 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 or the family court.
  
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 crime for which a person under the age of sixteen is criminally responsible, 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 crime for which a person under the age of sixteen is criminally responsible 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 removed to the family court in accordance with the provisions of article seven hundred twenty-five of this title; 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, the court shall, at the request of the district attorney, order removal of an action against a juvenile offender to the family court pursuant to the provisions of article seven hundred twenty-five of this title if, 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 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 [subdivision one of section 130.35 of the penal law](#), criminal sexual act in the first degree as 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.

5. Notwithstanding the provisions of subdivision two, three, or four of this section, if a currently undetermined felony complaint against a juvenile offender is pending, and the defendant has not waived a hearing pursuant to subdivision two of this section and a hearing pursuant to subdivision three of this section has not commenced, the defendant may move to remove the action to family court pursuant to 722.22 of this article. The procedural rules of [subdivisions one and two of section 210.45](#) of this chapter are applicable to a motion pursuant to this subdivision. Upon such motion, the court shall proceed and determine the motion as provided in [section 722.22](#) of this article; provided, however, that the exception provisions of [paragraph \(b\) of subdivision one of section 722.22](#) of this article shall not apply when there is not reasonable cause to believe that the juvenile offender committed one or more of the crimes enumerated therein, and in such event the provisions of paragraph (a) thereof shall apply.

6. (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 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 four or five of this section, 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) Where a motion for removal by the defendant pursuant to subdivision five of this section has been denied, no further motion pursuant to this section or [section 722.22](#) of this article may be made by the juvenile offender with respect to the same offense or offenses.

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

(f) Where a motion by the defendant pursuant to subdivision five of this section has been granted, there shall be no further proceedings against the juvenile 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.

## Credits

(Added [L.2017, c. 59, pt. WWW, § 1-a](#). Amended [L.2019, c. 240, § 1](#).)

## Editors' Notes

### PRACTICE COMMENTARY

by William C. Donnino

See Practice Commentary to [CPL 722.10](#).

McKinney's CPL § 722.20, NY CRIM PRO § 722.20

Current through L.2019, chapter 758 & L.2020, chapters 1 to 55, 58 to 88. Some statute sections may be more current, see credits for details.

**End of Document**

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

[McKinney's Consolidated Laws of New York Annotated](#)  
[Criminal Procedure Law \(Refs & Annos\)](#)  
[Chapter 11-a. Of the Consolidated Laws \(Refs & Annos\)](#)  
[Part Three. Special Proceedings and Miscellaneous Procedures](#)  
[Title U. Special Proceedings Which Replace, Suspend or Abate Criminal Actions](#)  
[Article 722. Proceedings Against Juvenile Offenders and Adolescent Offenders; Establishment of Youth Part and Related Procedures](#)

McKinney's CPL § 722.21

§ 722.21 Proceedings upon felony complaint; adolescent offender

Effective: October 1, 2019

[Currentness](#)

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 [subdivision one of section 130.35 of the penal law](#), criminal sexual act in the first degree as 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.

## Credits

(Added [L.2017, c. 59, pt. WWW, § 1-a](#). Amended [L.2019, c. 240, § 2](#).)

## Editors' Notes

### PRACTICE COMMENTARIES

by William C. Donnino

See Practice Commentary to [CPL 722.10](#).

McKinney's CPL § 722.21, NY CRIM PRO § 722.21

Current through L.2019, chapter 758 & L.2020, chapters 1 to 55, 58 to 88. Some statute sections may be more current, see credits for details.

**End of Document**

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

[McKinney's Consolidated Laws of New York Annotated](#)  
[Criminal Procedure Law \(Refs & Annos\)](#)  
[Chapter 11-a. Of the Consolidated Laws \(Refs & Annos\)](#)  
[Part Three. Special Proceedings and Miscellaneous Procedures](#)  
[Title U. Special Proceedings Which Replace, Suspend or Abate Criminal Actions](#)  
[Article 722. Proceedings Against Juvenile Offenders and Adolescent Offenders; Establishment of Youth Part and Related Procedures](#)

McKinney's CPL § 722.22

Formerly cited as NY CPL § 210.43

§ 722.22 Motion to remove juvenile offender to family court

Effective: October 1, 2019

[Currentness](#)

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 [subdivision one of section 130.35 of the penal law](#); criminal sexual act in the first degree, as 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.

## **Credits**

(Added [L.2017, c. 59, pt. WWW, § 1-a.](#))

## **Editors' Notes**

## PRACTICE COMMENTARIES

by William C. Donnino

See Practice Commentary to [CPL 722.10](#).

McKinney's CPL § 722.22, NY CRIM PRO § 722.22

Current through L.2019, chapter 758 & L.2020, chapters 1 to 55, 58 to 88. Some statute sections may be more current, see credits for details.

**End of Document**

© 2020 Thomson Reuters. No claim to original U.S.  
Government Works.

[McKinney's Consolidated Laws of New York Annotated](#)  
[Criminal Procedure Law \(Refs & Annos\)](#)  
[Chapter 11-a. Of the Consolidated Laws \(Refs & Annos\)](#)  
[Part Three. Special Proceedings and Miscellaneous Procedures](#)  
[Title U. Special Proceedings Which Replace, Suspend or Abate Criminal Actions](#)  
[Article 722. Proceedings Against Juvenile Offenders and Adolescent Offenders; Establishment of Youth Part and Related Procedures](#)

McKinney's CPL § 722.23

§ 722.23 Removal of adolescent offenders to family court

Effective: October 1, 2019

[Currentness](#)

1. (a) Following the arraignment of a defendant charged with a crime committed when he or she was sixteen, or commencing October first, two thousand nineteen, seventeen years of age, other than any class A felony except for those defined in 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, or an offense set forth in the vehicle and traffic law, the court shall order the removal of the action to the family court in accordance with the applicable provisions of article seven hundred twenty-five of this title unless, within thirty calendar days of such arraignment, the district attorney makes a motion to prevent removal of the action pursuant to this subdivision. If the defendant fails to report to the probation department as directed, the thirty day time period shall be tolled until such time as he or she reports to the probation department.
  
- (b) A motion to prevent removal of an action in youth part shall be made in writing and upon prompt notice to the defendant. The motion shall contain allegations of sworn fact based upon personal knowledge of the affiant, and shall indicate if the district attorney is requesting a hearing. The motion shall be noticed to be heard promptly.
  
- (c) The defendant shall be given an opportunity to reply. The defendant shall be granted any reasonable request for a delay. Either party may request a hearing on the facts alleged in the motion to prevent removal of the action. The hearing shall be held expeditiously.
  
- (d) The court shall deny the motion to prevent removal of the action in youth part unless the court makes a determination upon such motion by the district attorney that extraordinary circumstances exist that should prevent the transfer of the action to family court.
  
- (e) The court shall make a determination in writing or on the record within five days of the conclusion of the hearing or submission by the defense, whichever is later. Such determination shall include findings of fact and to the extent practicable conclusions of law.
  
- (f) For the purposes of this section, there shall be a presumption against custody and case planning services shall be made available to the defendant.

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

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

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

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

(c) The court shall order the action to proceed in accordance with subdivision one of this section unless, after reviewing the papers and hearing from the parties, the court determines in writing that the district attorney proved by a preponderance of the evidence one or more of the following as set forth in the accusatory instrument:

(i) the defendant caused significant physical injury to a person other than a participant in the offense; or

(ii) the defendant displayed a firearm, shotgun, rifle or deadly weapon as defined in the penal law in furtherance of such offense; or

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

(d) Where the court makes a determination that the action shall not proceed in accordance with subdivision one of this section, such determination shall be made in writing or on the record and shall include findings of fact and to the extent practicable conclusions of law.

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

3. Notwithstanding the provisions of any other law, if at any time one or more charges in the accusatory instrument are reduced, such that the elements of the highest remaining charge would be removable pursuant to

subdivisions one or two of this section, then the court, sua sponte or in response to a motion pursuant to subdivisions one or two of this section by the defendant, shall promptly notify the parties and direct that the matter proceed in accordance with subdivision one of this section, provided, however, that in such instance, the district attorney must file any motion to prevent removal within thirty days of effecting or receiving notice of such reduction.

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

## **Credits**

(Added [L.2017, c. 59, pt. WWW, § 1-a.](#))

## **Editors' Notes**

### **PRACTICE COMMENTARIES**

by William C. Donnino

See Practice Commentary to [CPL 722.10](#).

## [Notes of Decisions \(29\)](#)

McKinney's CPL § 722.23, NY CRIM PRO § 722.23

Current through L.2019, chapter 758 & L.2020, chapters 1 to 55, 58 to 88. Some statute sections may be more current, see credits for details.

**End of Document**

© 2020 Thomson Reuters. No claim to original U.S. Government Works.