

CHAPTER 89

AN ACT concerning juvenile justice, amending and supplementing various parts of the statutory law, and repealing section 7 of P.L.1982, c.77.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.2A:4A-26.1 Filing motion seeking waiver of jurisdiction; hearing.

1. a. A prosecutor seeking waiver of jurisdiction of a juvenile delinquency case by the Superior Court, Chancery Division, Family Part to an appropriate court and prosecuting authority without the consent of the juvenile shall file a motion within 60 days after the receipt of the complaint, which time may be extended for good cause shown. The motion shall be accompanied by a written statement of reasons clearly setting forth the facts used in assessing all factors contained in paragraph (3) of subsection c. of this section, together with an explanation as to how evaluation of those facts support waiver for each particular juvenile.

b. At a hearing, the court shall receive the evidence offered by the State and by the juvenile. The State shall provide proof to satisfy the requirements set forth in paragraphs (1) and (2) of subsection c. of this section. The court also shall review whether the State considered the factors set forth in paragraph (3) of subsection c. of this section.

c. Except as provided in paragraph (3) of this subsection, the court shall waive jurisdiction of a juvenile delinquency case without the juvenile's consent and shall refer the case to the appropriate court and prosecuting authority having jurisdiction if:

(1) The juvenile was 15 years of age or older at the time of the alleged delinquent act; and

(2) There is probable cause to believe that the juvenile committed a delinquent act which if committed by an adult would constitute:

(a) criminal homicide, other than death by auto;

(b) strict liability for drug-induced deaths;

(c) first degree robbery;

(d) carjacking;

(e) aggravated sexual assault;

(f) sexual assault;

(g) second degree aggravated assault;

(h) kidnapping;

(i) aggravated arson;

(j) possession of a firearm with a purpose to use it unlawfully against the person of another under subsection a. of N.J.S.2C:39-4, or possession of a firearm while committing or attempting to commit, including the immediate flight therefrom, aggravated assault, aggravated criminal sexual contact, burglary, or escape;

(k) a violation of N.J.S.2C:35-3 (Leader of a Narcotics Trafficking Network);

(l) a violation of N.J.S.2C:35-4 (Maintaining and Operating a CDS Production Facility);

(m) a violation of section 1 of P.L.1998, c.26 (C.2C:39-4.1) (Weapons Possession while Committing certain CDS Offenses);

(n) an attempt or conspiracy to commit any of the crimes enumerated in subparagraphs (a) through (m) of this paragraph; or

(o) a crime committed at a time when the juvenile previously had been sentenced and confined in an adult correctional facility.

(3) The court may deny a motion by the prosecutor to waive jurisdiction of a juvenile delinquency case if it is clearly convinced that the prosecutor abused his discretion in considering the following factors in deciding whether to seek a waiver:

- (a) The nature and circumstances of the offense charged;
- (b) Whether the offense was against a person or property, allocating more weight for crimes against the person;
- (c) Degree of the juvenile's culpability;
- (d) Age and maturity of the juvenile;
- (e) Any classification that the juvenile is eligible for special education to the extent this information is provided to the prosecution by the juvenile or by the court;
- (f) Degree of criminal sophistication exhibited by the juvenile;
- (g) Nature and extent of any prior history of delinquency of the juvenile and dispositions imposed for those adjudications;
- (h) If the juvenile previously served a custodial disposition in a State juvenile facility operated by the Juvenile Justice Commission, and the response of the juvenile to the programs provided at the facility to the extent this information is provided to the prosecution by the Juvenile Justice Commission;
- (i) Current or prior involvement of the juvenile with child welfare agencies;
- (j) Evidence of mental health concerns, substance abuse, or emotional instability of the juvenile to the extent this information is provided to the prosecution by the juvenile or by the court; and
- (k) If there is an identifiable victim, the input of the victim or victim's family.

The Attorney General may develop for dissemination to the county prosecutors those guidelines or directives deemed necessary or appropriate to ensure the uniform application of this section throughout the State.

d. An order waiving jurisdiction over a case and referring the case to the appropriate court and prosecuting authority shall specify the alleged act upon which the referral is based and all other delinquent acts charged against the juvenile arising out of or related to the same transaction.

e. Testimony of a juvenile at a hearing to determine referral under this section shall not be admissible for any purpose in any subsequent hearing to determine delinquency or guilt of any offense.

f. Upon waiver of jurisdiction and referral to the appropriate court and prosecuting authority having jurisdiction:

(1) The case shall proceed as if it originated in that court and shall be subject to the sentencing provisions available to that court; provided, however, upon conviction for any offense which is subject to waiver pursuant to paragraph (2) of subsection c. of this section, there shall be a presumption that the juvenile shall serve any custodial sentence imposed in a State juvenile facility operated by the Juvenile Justice Commission until the juvenile reaches the age of 21, except that:

(a) a juvenile who has not reached the age of 21 may, in the discretion of the Juvenile Justice Commission, be transferred to the Department of Corrections in accordance with the plan established pursuant to subsection e. of section 7 of P.L.1995, c.284 (C.52:17B-175) and regulations adopted pursuant to that section; and

(b) a juvenile who has reached or exceeds the age of 21 may continue to serve a sentence in a State juvenile facility operated by the Juvenile Justice Commission in the discretion of the Juvenile Justice Commission and if the juvenile so consents; otherwise the juvenile shall serve the remainder of the custodial sentence in a State correctional facility;

(2) If a juvenile is not convicted of an offense set forth in paragraph (2) of subsection c. of this section, a conviction for any other offense shall be deemed a juvenile adjudication and be remanded to the Superior Court, Chancery Division, Family Part for disposition, in accordance with the dispositional options available to that court and all records related to the act of delinquency shall be subject to the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60);

(3) With the consent of the defense and the prosecutor, at any point in the proceedings subsequent to the decision ordering waiver the court may remand to the Superior Court, Chancery Division, Family Part if it appears that:

(a) the interests of the public and the best interests of the juvenile require access to programs or procedures uniquely available to that court; and

(b) the interests of the public are no longer served by waiver.

g. (1) The Juvenile Justice Commission, in consultation with the Attorney General, shall establish a program to collect, record, and analyze data regarding waiver of jurisdiction of a juvenile delinquency case by the Superior Court, Chancery Division, Family Part to an appropriate court and prosecuting authority. In furtherance of this program, the Juvenile Justice Commission shall, in cooperation with the Administrative Office of the Courts, Attorney General, and county prosecutors, collect data related to the decision to seek waiver of jurisdiction of a juvenile delinquency case, which shall include but not be limited to data concerning:

(a) youth demographics, including age, gender, race, and ethnicity;

(b) case characteristics, including the degree of the offense waived, the degree of the offense convicted, and the final court resolution;

(c) case processing times; and

(d) waiver rates by race and ethnicity.

(2) The commission shall prepare and publish on its Internet website biennial reports summarizing the data collected, recorded, and analyzed pursuant to paragraph (1) of this subsection.

(3) The commission shall, pursuant to section 2 of P.L. 1991, c.164 (C.52:14-19.1), biennially prepare and transmit to the Governor and the Legislature the reports required in paragraph (2) of this subsection, along with any recommendations the commission may have for legislation concerning waiver of jurisdiction of juvenile delinquency cases.

2. Section 17 of P.L.1982, c.77 (C.2A:4A-36) is amended to read as follows:

C.2A:4A-36 Detention of waiver cases.

17. a. If the court waives jurisdiction over a case and refers that case to the appropriate court and prosecuting authority, there shall be a hearing before the court waiving jurisdiction to decide whether to detain the juvenile pending resolution of the case. If detention is deemed necessary, there shall be a presumption that the juvenile shall be detained in a county juvenile detention facility, unless good cause is shown that it is necessary to detain the juvenile in a county jail or other county correctional facility in which adults are incarcerated.

b. Upon conviction in the appropriate court and where detention pending sentencing is deemed necessary, there shall be a presumption that the juvenile shall be detained in a county juvenile detention facility, unless good cause is shown that it is necessary to detain the juvenile in a county jail or other county correctional facility in which adults are incarcerated.

c. Good cause under this section shall be based on the best interests of the juvenile and protection of the public, and shall take into account such factors, including but not limited to,

the juvenile's age and maturity, the nature and circumstances of the offense charged or for which the juvenile was convicted, the juvenile's prior offense history, the programs available at juvenile detention facilities, and any other relevant factors.

d. A juvenile who has been waived to an appropriate adult court shall not be remanded to a county jail or other county correctional facility in which adults are incarcerated prior to the hearing provided for in subsection a. of this section.

3. Section 25 of P.L.1982, c.77 (C.2A:4A-44) is amended to read as follows:

C.2A:4A-44 Incarceration – aggravating and mitigating factors.

25. Incarceration--Aggravating and mitigating factors.

a. (1) Except as provided in subsections e. and f. of section 24 of P.L.1982, c.77 (C.2A:4A-43), in determining whether incarceration is an appropriate disposition, the court shall consider the following aggravating circumstances:

(a) The fact that the nature and circumstances of the act, and the role of the juvenile therein, was committed in an especially heinous, cruel, or depraved manner;

(b) The fact that there was grave and serious harm inflicted on the victim and that based upon the juvenile's age or mental capacity the juvenile knew or reasonably should have known that the victim was particularly vulnerable or incapable of resistance due to advanced age, disability, ill-health, or extreme youth, or was for any other reason substantially incapable;

(c) The character and attitude of the juvenile indicate that the juvenile is likely to commit another delinquent or criminal act;

(d) The juvenile's prior record and the seriousness of any acts for which the juvenile has been adjudicated delinquent;

(e) The fact that the juvenile committed the act pursuant to an agreement that the juvenile either pay or be paid for the commission of the act and that the pecuniary incentive was beyond that inherent in the act itself;

(f) The fact that the juvenile committed the act against a policeman or other law enforcement officer, correctional employee or fireman, acting in the performance of his duties while in uniform or exhibiting evidence of his authority, or the juvenile committed the act because of the status of the victim as a public servant;

(g) The need for deterring the juvenile and others from violating the law;

(h) The fact that the juvenile knowingly conspired with others as an organizer, supervisor, or manager to commit continuing criminal activity in concert with two or more persons and the circumstances of the crime show that he has knowingly devoted himself to criminal activity as part of an ongoing business activity;

(i) The fact that the juvenile on two separate occasions was adjudged a delinquent on the basis of acts which if committed by an adult would constitute crimes;

(j) The impact of the offense on the victim or victims;

(k) The impact of the offense on the community; and

(l) The threat to the safety of the public or any individual posed by the child.

(2) In determining whether incarceration is an appropriate disposition the court shall consider the following mitigating circumstances:

(a) The child is under the age of 14;

(b) The juvenile's conduct neither caused nor threatened serious harm;

(c) The juvenile did not contemplate that the juvenile's conduct would cause or threaten serious harm;

- (d) The juvenile acted under a strong provocation;
- (e) There were substantial grounds tending to excuse or justify the juvenile's conduct, though failing to establish a defense;
- (f) The victim of the juvenile's conduct induced or facilitated its commission;
- (g) The juvenile has compensated or will compensate the victim for the damage or injury that the victim has sustained, or will participate in a program of community service;
- (h) The juvenile has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present act;
- (i) The juvenile's conduct was the result of circumstances unlikely to recur;
- (j) The character and attitude of the juvenile indicate that the juvenile is unlikely to commit another delinquent or criminal act;
- (k) The juvenile is particularly likely to respond affirmatively to noncustodial treatment;
- (l) The separation of the juvenile from the juvenile's family by incarceration of the juvenile would entail excessive hardship to the juvenile or the juvenile's family;
- (m) The willingness of the juvenile to cooperate with law enforcement authorities;
- (n) The conduct of the juvenile was substantially influenced by another person more mature than the juvenile.

b. (1) There shall be a presumption of nonincarceration for any crime or offense of the fourth degree or less committed by a juvenile who has not previously been adjudicated delinquent or convicted of a crime or offense.

(2) Where incarceration is imposed, the court shall consider the juvenile's eligibility for release under the law governing parole.

c. The following juveniles shall not be committed to a State juvenile facility:

- (1) Juveniles age 11 or under unless adjudicated delinquent for the crime of arson or a crime which, if committed by an adult, would be a crime of the first or second degree; and
- (2) Juveniles who are developmentally disabled as defined in paragraph (1) of subsection a. of section 3 of P.L.1977, c.82 (C.30:6D-3).

d. (1) When the court determines that, based on the consideration of all the factors set forth in subsection a., the juvenile shall be incarcerated, unless it orders the incarceration pursuant to subsection c. of section 24 of P.L.1982, c.77 (C.2A:4A-43), it shall state on the record the reasons for imposing incarceration, including any findings with regard to these factors, and commit the juvenile to the custody of the Juvenile Justice Commission which shall provide for the juvenile's placement in a suitable juvenile facility pursuant to the conditions set forth in this subsection and for terms not to exceed the maximum terms as provided herein for what would constitute the following crimes if committed by an adult:

- (a) Murder under 2C:11-3a(1) or (2) 20 years
- (b) Murder under 2C:11-3a(3) 10 years
- (c) Crime of the first degree, except murder 4 years
- (d) Crime of the second degree 3 years
- (e) Crime of the third degree 2 years
- (f) Crime of the fourth degree 1 year
- (g) Disorderly persons offense 6 months

(2) Except as provided in subsection e. of section 24 of P.L.1982, c.77 (C.2A:4A-43), the period of confinement shall continue until the appropriate paroling authority determines that such a person should be paroled; except that in no case shall the period of confinement and parole exceed the maximum provided by law for such offense. However, if a juvenile is approved for parole prior to serving one-third of any term imposed for any crime of the first, second or third degree, including any extended term imposed pursuant to paragraph (3) or (4)

of this subsection, or one-fourth of any term imposed for any other crime the granting of parole shall be subject to approval of the sentencing court. Prior to approving parole, the court shall give the prosecuting attorney notice and an opportunity to be heard. If the court denies the parole of a juvenile pursuant to this paragraph it shall state its reasons in writing and notify the parole board, the juvenile and the juvenile's attorney. The court shall have 30 days from the date of notice of the pending parole to exercise the power granted under this paragraph. If the court does not respond within that time period, the parole will be deemed approved.

Any juvenile committed under this act who is released on parole prior to the expiration of the juvenile's maximum term may be retained under parole supervision for a period not exceeding the unserved portion of the term and any term of post-incarceration supervision imposed pursuant to paragraph (5) of this subsection. The Parole Board, the juvenile, the juvenile's attorney, the juvenile's parent or guardian or, with leave of the court any other interested party, may make a motion to the court, with notice to the prosecuting attorney, for the return of the child from a juvenile facility prior to his parole and provide for an alternative disposition which would not exceed the duration of the original time to be served in the facility. Nothing contained in this paragraph shall be construed to limit the authority of the Parole Board as set forth in section 15 of P.L.1979, c.441 (C.30:4-123.59).

(3) Upon application by the prosecutor, the court may sentence a juvenile who has been convicted of a crime of the first, second, or third degree if committed by an adult, to an extended term of incarceration beyond the maximum set forth in paragraph (1) of this subsection, if it finds that the juvenile was previously adjudged delinquent on at least two separate occasions, for offenses which, if committed by an adult, would constitute a crime of the first or second degree. The extended term shall not exceed five additional years for an act which would constitute murder and shall not exceed three additional years for all other crimes of the first degree and shall not exceed two additional years for a crime of the second degree, if committed by an adult, and one additional year for a crime of the third degree, if committed by an adult.

(4) Upon application by the prosecutor, when a juvenile is before the court at one time for disposition of three or more unrelated offenses which, if committed by an adult, would constitute crimes of the first, second or third degree and which are not part of the same transaction, the court may sentence the juvenile to an extended term of incarceration not to exceed the maximum of the permissible term for the most serious offense for which the juvenile has been adjudicated plus two additional years.

(5) Every disposition that includes a term of incarceration shall include a term of post-incarceration supervision equivalent to one-third of the term of incarceration imposed. During the term of post-incarceration supervision the juvenile shall remain in the community and in the legal custody of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) in accordance with the rules of the parole board, unless the appropriate parole board panel determines that post-incarceration supervision should be revoked and the juvenile returned to custody in accordance with the procedures and standards set forth in sections 15 through 21 of P.L.1979, c.441 (C.30:4-123.59 through C.30:4-123.65). The term of post-incarceration supervision shall commence upon release from incarceration or parole, whichever is later. A term of post-incarceration supervision imposed pursuant to this paragraph may be terminated by the appropriate parole board panel if the juvenile has made a satisfactory adjustment in the community while on parole or under such supervision, if continued supervision is not required and if the juvenile has made full payment of any fine or restitution.

4. Section 7 of P.L.1995, c.284 (C.52:17B-175) is amended to read as follows:

C.52:17B-175 Responsibilities of other departments.

7. a. Notwithstanding the Juvenile Justice Commission's responsibility for State secure juvenile facilities and State juvenile facilities and programs, the Department of Corrections, through agreement with the commission, shall provide central transportation, communication and other services required by the commission in connection with the operation of these facilities and the custody and care of juveniles confined in the facilities.

b. Notwithstanding the commission's responsibility for State secure juvenile facilities and State juvenile facilities, the Department of Children and Families shall provide care and custody for juveniles placed under the care and custody or committed to the department pursuant to paragraphs (5), (6) and (7) of subsection b. of section 24 of P.L.1982, c.77 (C.2A:4A-43).

c. The commission and the Commissioner of Children and Families shall formulate a plan to provide adequate and appropriate mental health services to juveniles in secure juvenile facilities and juvenile facilities operated by the commission. The commission and the Commissioner of Children and Families shall jointly adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establishing the procedures included in the plan. The plan shall include the following:

(1) Procedures for identifying juveniles in need of such services upon admission to and while in a facility, including procedures for evaluation;

(2) Procedures for providing appropriate and adequate treatment and for terminating treatment when it is no longer needed;

(3) Procedures for ensuring cooperation between employees of the commission and the Department of Children and Families; and

(4) Procedures for review and revision of the plan.

d. The commission, through agreement with the Attorney General, the Commissioner of Corrections or the Commissioner of Children and Families as appropriate, shall arrange to provide such other services as may be required by the commission and may enter into other agreements as authorized pursuant to R.S.52:14-1 et seq. or any other law of this State.

e. The commission and the Commissioner of Corrections shall, consistent with applicable State and federal standards, formulate a plan setting forth procedures for transferring custody of any juvenile incarcerated in a juvenile facility who has reached the age of 18 during confinement and whose continued presence in the juvenile facility threatens the public safety, the safety of juvenile offenders, or the ability of the commission to operate the program in the manner intended. The commission and the Commissioner of Corrections shall jointly adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establishing the procedures included in the plan. At a minimum, the plan shall require that:

(1) the juvenile be notified, in writing, of the proposed transfer and the factual basis supporting the transfer;

(2) the juvenile be provided with the opportunity to be heard and to present opposition;

(3) the juvenile be represented by the Office of the Public Defender, unless the juvenile chooses to be represented by nonprofit counsel or engage private counsel at the juvenile's expense;

(4) the decision to proceed with the transfer be made by an impartial person; and

(5) written findings of the facts supporting the decision to proceed with the transfer accompany the decision.

C.52:17B-171.13 Regulations relative to room restriction for juveniles.

5. a. A juvenile detained in, or sentenced to, a State juvenile correctional facility or county juvenile detention center shall not be subject to room restriction unless the juvenile poses an immediate and substantial risk of harm to others or to the security of the facility, and all other less-restrictive options have been exhausted.

b. A juvenile may be subject to room restriction only for the minimum time required to address the safety risk and for a period that does not compromise the mental and physical health of the juvenile, but in no case shall a juvenile be held in room restriction for more than eight consecutive waking hours without being released for at least two hours for recreation and exercise.

c. A juvenile who is 15 years of age or younger shall not be subject to room restriction for more than two consecutive days. A juvenile who is 16 years of age or older but younger than 18 years of age shall not be subject to room restriction for more than three consecutive days. A juvenile who is 18 years of age or older shall not be subject to room restriction for more than five consecutive days. A juvenile shall not be subject to room restriction for more than 10 total days in a calendar month.

d. Juveniles subject to room restriction shall continue to receive health, mental health, and educational services.

e. Each State correctional facility or county juvenile detention facility shall document, in aggregate, the use of room restriction, including the dates and duration of each occurrence, the reason for placement in room restriction, and the race, age, and gender of the juvenile placed in room restriction. If any health or mental health clinical evaluations were performed, it shall be affirmatively certified that the results of those evaluations were considered in any decision to place the juvenile in room restriction or to continue room restriction.

The aggregate data compiled pursuant to this subsection shall be:

(1) made available for public inspection pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the open public records act; and

(2) published on the official Internet website of the Juvenile Justice Commission.

f. This section shall not prohibit the use of single-person rooms or cells for the housing of juveniles in State correctional or county juvenile detention centers.

g. This section does not apply to juveniles in court holding facilities or adult facilities.

h. Nothing in this section shall be construed to conflict with any law providing greater or additional protections to juveniles.

i. For the purposes of this section, "room restriction" shall mean the placement of a juvenile in a State juvenile correctional facility or county juvenile detention center in a locked room or cell, alone or with one other person, for 22 to 24 hours per day. Room restriction shall not include confinement of a juvenile in a single-person room or cell for brief periods of locked-room confinement necessary for institutional operations, including, but not limited to, shift changes, showering, and unit movements.

Repealer.

6. Section 7 of P.L.1982, c.77 (C.2A:4A-26) is repealed.

7. This act shall take effect on the first day of the seventh month following enactment.

Approved August 10, 2015.