

[Third Reprint]

**SENATE, No. 2003**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

INTRODUCED APRIL 28, 2014

**Sponsored by:**

**Senator NELLIE POU**

**District 35 (Bergen and Passaic)**

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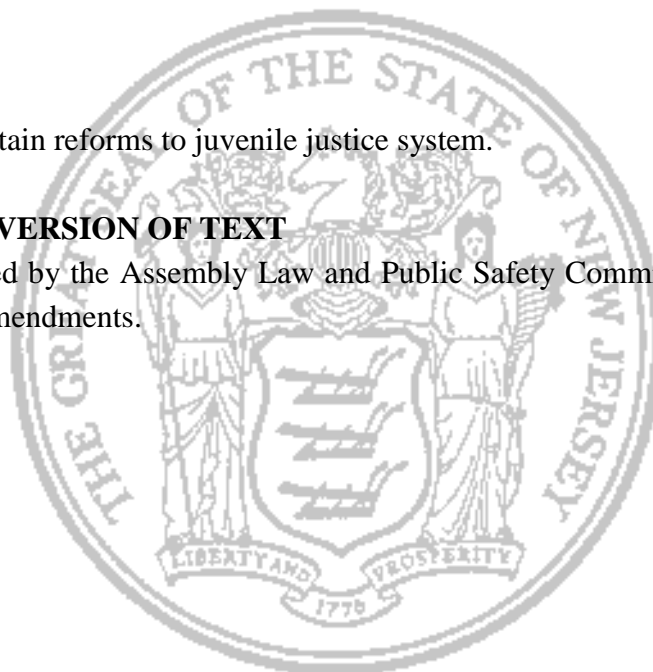
**Senator Lesniak, Assemblywoman Mosquera, Assemblymen Eustace,  
Coughlin and Assemblywoman Muoio**

**SYNOPSIS**

Makes certain reforms to juvenile justice system.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Law and Public Safety Committee on June 1, 2015, with amendments.



**(Sponsorship Updated As Of: 6/26/2015)**

1 AN ACT concerning juvenile justice <sup>1</sup>~~and~~,<sup>1</sup> amending and  
2 supplementing various parts of the statutory law <sup>1</sup>, and repealing  
3 section 7 of P.L.1982, c.77<sup>1</sup>.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 <sup>1</sup>~~1.~~ Section 7 of P.L.1982, c.77 (C.2A:4A-26) is amended to  
9 read as follows:

10 7. a. On motion of the prosecutor, the court shall, without the  
11 consent of the juvenile, waive jurisdiction over a case and refer that  
12 case from the Superior Court, Chancery Division, Family Part to the  
13 appropriate court and prosecuting authority having jurisdiction if it  
14 finds, after hearing, that:

15 (1) The juvenile was ~~14~~ **16** years of age or older at the time of  
16 the charged delinquent act; and

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

20 (a) Criminal homicide other than death by auto, strict liability  
21 for drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which  
22 would constitute a crime of the first degree, carjacking, aggravated  
23 sexual assault, sexual assault, aggravated assault which would  
24 constitute a crime of the second degree, kidnapping, aggravated  
25 arson, or gang criminality pursuant to section 1 of P.L.2007, c.341  
26 (C.2C:33-29) where the underlying crime is enumerated in this  
27 subparagraph or promotion of organized street crime pursuant to  
28 section 2 of P.L.2007, c.341 (C.2C:33-30) which would constitute a  
29 crime of the first or second degree which is enumerated in this  
30 subparagraph; or

31 (b) A crime committed at a time when the juvenile had  
32 previously been adjudicated delinquent, or convicted, on the basis  
33 of any of the offenses enumerated in subsection a.(2)(a); or

34 (c) A crime committed at a time when the juvenile had  
35 previously been sentenced and confined in an adult penal  
36 institution; or

37 (d) An offense against a person committed in an aggressive,  
38 violent and willful manner, other than an offense enumerated in  
39 subsection a.(2)(a) of this section, or the unlawful possession of a  
40 firearm, destructive device or other prohibited weapon, arson or  
41 death by auto if the juvenile was operating the vehicle under the  
42 influence of an intoxicating liquor, narcotic, hallucinogenic or habit  
43 producing drug; or

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SLP committee amendments adopted March 12, 2015.

<sup>2</sup>Senate SBA committee amendments adopted May 14, 2015.

<sup>3</sup>Assembly ALP committee amendments adopted June 1, 2015.

- 1 (e) A violation of N.J.S.2C:35-3, N.J.S.2C:35-4, or  
2 N.J.S.2C:35-5; or
- 3 (f) Crimes which are a part of a continuing criminal activity in  
4 concert with two or more persons and the circumstances of the  
5 crimes show the juvenile has knowingly devoted himself to criminal  
6 activity as a source of livelihood; or
- 7 (g) An attempt or conspiracy to commit any of the acts  
8 enumerated in paragraph (a), (d) or (e) of this subsection; or
- 9 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of  
10 the New Jersey Statutes; or
- 11 (i) Possession of a firearm with a purpose to use it unlawfully  
12 against the person of another under subsection a. of N.J.S.2C:39-4,  
13 or the crime of aggravated assault, aggravated criminal sexual  
14 contact, burglary or escape if, while in the course of committing or  
15 attempting to commit the crime including the immediate flight  
16 therefrom, the juvenile possessed a firearm; or
- 17 (j) Computer criminal activity which would be a crime of the  
18 first or second degree pursuant to section 4 or section 10 of  
19 P.L.1984. c.184 (C.2C:20-25 or C.2C:20-31); and
- 20 (3) Except with respect to any of the acts enumerated in  
21 subparagraph (a), (i) or (j) of paragraph (2) of subsection a. of this  
22 section, or with respect to any acts enumerated in subparagraph (e)  
23 of paragraph (2) of subsection a. of this section which involve the  
24 distribution for pecuniary gain of any controlled dangerous  
25 substance or controlled substance analog while on any property  
26 used for school purposes which is owned by or leased to any school  
27 or school board, or within 1,000 feet of such school property or  
28 while on any school bus, or any attempt or conspiracy to commit  
29 any of those acts, the State has shown that the nature and  
30 circumstances of the charge or the prior record of the juvenile are  
31 sufficiently serious that the interests of the public require waiver.
- 32 b. (Deleted by amendment, P.L.1999, c.373).
- 33 c. An order referring a case shall incorporate therein not only  
34 the alleged act or acts upon which the referral is premised, but also  
35 all other delinquent acts arising out of or related to the same  
36 transaction.
- 37 d. A motion seeking waiver shall be filed by the prosecutor  
38 within **[30]** 60 days of receipt of the complaint. This time limit  
39 shall not, except for good cause shown, be extended.
- 40 e. **[If the juvenile can show that the probability of his**  
41 **rehabilitation by the use of the procedures, services and facilities**  
42 **available to the court prior to the juvenile reaching the age of 19**  
43 **substantially outweighs the reasons for waiver, waiver shall not be**  
44 **granted]** A motion for waiver shall not be granted unless the  
45 prosecution proves, by clear and convincing evidence, that the  
46 reasons for waiver outweigh the probability of the juvenile's  
47 rehabilitation by the use of the procedures, services and facilities  
48 available to the court prior to the juvenile reaching the age of 26.

1 This subsection shall not apply with respect to a juvenile 16 years  
2 of age or older who is charged with committing any of the acts  
3 enumerated in subparagraph (a), (i) or (j) of paragraph (2) of  
4 subsection a. of this section or with respect to a violation of  
5 N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998, c.26  
6 (C.2C:39-4.1).

7 f. The Attorney General shall develop for dissemination to the  
8 county prosecutors those guidelines or directives deemed necessary  
9 or appropriate to ensure the uniform application of this section  
10 throughout the State.

11 (cf: P.L.2007, c.341, s.3)]<sup>1</sup>

12

13 <sup>1</sup>[2. (New section) When the court imposes a term of  
14 incarceration pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-  
15 44), it shall consider the rehabilitative, treatment, and educational  
16 needs of the juvenile and may order the Juvenile Justice  
17 Commission to provide the juvenile with the following services and  
18 assistance to address these needs:

19 a. Academic instruction and academic counseling, consistent  
20 with State and federal law;

21 b. Vocational education and training;

22 c. Post-secondary educational opportunities, including but not  
23 limited to enrollment assistance and college-level instruction;

24 d. A suitable program for the treatment of alcohol or narcotic  
25 abuse, provided that the juvenile has been determined to be in need  
26 of such services;

27 e. Mental health treatment or counseling;

28 f. Medical and dental care and treatment;

29 g. Regular contact through telephone calls and in-person visits  
30 with the juvenile's parents, guardians, and other family members,  
31 including transportation assistance upon showing a demonstrated  
32 need for this assistance;

33 h. Work programs that are designed to provide job skills and  
34 specific employment training to enhance the employment readiness  
35 of the juvenile;

36 i. Re-entry services to assist the juvenile in returning to the  
37 community; and

38 j. Any other services or assistance reasonably related to the  
39 rehabilitation of the juvenile.]<sup>1</sup>

40

41 <sup>1</sup>1. (New section) a. A prosecutor seeking waiver of jurisdiction  
42 of a juvenile delinquency case by the Superior Court, Chancery  
43 Division, Family Part to an appropriate court and prosecuting  
44 authority <sup>2</sup>without the consent of the juvenile<sup>2</sup> shall file a motion  
45 within 60 days after the receipt of the complaint, which time may be  
46 extended for good cause shown. <sup>2</sup>The motion shall be accompanied  
47 by a written statement of reasons clearly setting forth the facts used  
48 in assessing all factors contained in paragraph (3) of subsection c.

1 of this section, together with an explanation as to how evaluation of  
2 those facts support waiver for each particular juvenile.<sup>2</sup>

3 b. At a hearing, the court shall receive the evidence offered by  
4 the State and by the juvenile <sup>2</sup>[, limited to the issue of probable  
5 cause. The court also shall permit cross-examination of any  
6 witnesses]<sup>2</sup> . <sup>2</sup>The State shall provide proof to satisfy the  
7 requirements set forth in paragraphs (1) and (2) of subsection c. of  
8 this section. The court also shall review whether the State  
9 considered the factors set forth in paragraph (3) of subsection c. of  
10 this section.<sup>2</sup>

11 c. <sup>2</sup>[The] Except as provided in paragraph (3) of this subsection,  
12 the<sup>2</sup> court shall waive jurisdiction of a juvenile delinquency case  
13 without the juvenile's consent and shall refer the case to the  
14 appropriate court and prosecuting authority having jurisdiction if:

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

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

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

21 (b) strict liability for drug-induced deaths;

22 (c) first degree robbery;

23 (d) carjacking;

24 (e) aggravated sexual assault;

25 (f) sexual assault;

26 (g) second degree aggravated assault;

27 (h) kidnapping;

28 (i) aggravated arson;

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

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

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

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

40 <sup>2</sup>[or]<sup>2</sup>

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

43 <sup>2</sup>[and] or

44 (o) a crime committed at a time when the juvenile previously had  
45 been sentenced and confined in an adult correctional facility.<sup>2</sup>

46 (3) <sup>2</sup>[the prosecution proves, by clear and convincing evidence,  
47 that the nature and circumstances of the charge or the juvenile's

1 prior record are sufficiently serious that the interests of the public  
2 require waiver. The court shall consider the following factors when  
3 deciding whether the interests of the public require waiver】 The  
4 court may deny a motion by the prosecutor to waive jurisdiction of  
5 a juvenile delinquency case if it is clearly convinced that the  
6 prosecutor abused his discretion in considering the following  
7 factors in deciding whether to seek a waiver<sup>2</sup>:

8 (a) The nature and circumstances of the offense charged;

9 (b) Whether the offense was against a person or property,  
10 allocating more weight for crimes against the person;

11 (c) Degree of the juvenile's culpability;

12 (d) Age <sup>2</sup>and maturity<sup>2</sup> of the juvenile;

13 (e) <sup>2</sup>【Diagnoses concerning mental capacity or cognitive  
14 development of the juvenile, or any】 Any<sup>2</sup> classification that the  
15 juvenile is eligible for special education <sup>2</sup>to the extent this  
16 information is provided to the prosecution by the juvenile or by the  
17 court<sup>2</sup> ;

18 (f) <sup>2</sup>【Maturity of the juvenile;

19 (g)】<sup>2</sup> Degree of criminal sophistication exhibited by the juvenile;

20 <sup>2</sup>【(h)】 <sup>3</sup>【g.】<sup>2</sup> (g)<sup>3</sup> Nature and extent of any prior history of  
21 delinquency of the juvenile <sup>2</sup>and dispositions imposed for those  
22 adjudications<sup>2</sup> ;

23 <sup>2</sup>(h) If the juvenile previously served a custodial disposition in a  
24 State juvenile facility operated by the Juvenile Justice Commission,  
25 and the response of the juvenile to the programs provided at the  
26 facility to the extent this information is provided to the prosecution  
27 by the Juvenile Justice Commission;<sup>2</sup>

28 (i) Current or prior involvement of the juvenile with child  
29 welfare agencies;

30 (j) Evidence of mental health concerns, substance abuse, or  
31 emotional instability of the juvenile <sup>2</sup>【; and

32 (k) Moral development of the juvenile】 to the extent this  
33 information is provided to the prosecution by the juvenile or by the  
34 court; and

35 (k) If there is an identifiable victim, the input of the victim or  
36 victim's family.

37 The Attorney General may develop for dissemination to the  
38 county prosecutors those guidelines or directives deemed necessary  
39 or appropriate to ensure the uniform application of this section  
40 throughout the State<sup>2</sup>.

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

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

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

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

15 (a) a juvenile who has not reached the age of 21 may <sup>2</sup>[be  
16 required to serve the sentence in a State correctional facility for  
17 good cause shown] , in the discretion of the Juvenile Justice  
18 Commission, be transferred to the Department of Corrections in  
19 accordance with the plan established pursuant to subsection e. of  
20 section 7 of P.L.1995, c.284 (C.52:17B-175) and regulations  
21 adopted pursuant to that section<sup>2</sup>; and

22 (b) a juvenile who has reached or exceeds the age of 21 may  
23 continue to serve a sentence in a <sup>2</sup>State<sup>2</sup> juvenile facility <sup>2</sup>[if it is  
24 deemed to be in the best interests of that juvenile] operated by the  
25 Juvenile Justice Commission in the discretion of the Juvenile  
26 Justice Commission and if the juvenile so consents; otherwise the  
27 juvenile shall serve the remainder of the custodial sentence in a  
28 State correctional facility<sup>2</sup> ;

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

37 (3) <sup>2</sup>[If] With the consent of the defense and the prosecutor,<sup>2</sup> at  
38 any point in the proceedings subsequent to the decision ordering  
39 waiver <sup>2</sup>[information is obtained that has any bearing on the factors  
40 considered in paragraph (3) of subsection c. of this section, the  
41 juvenile may petition]<sup>2</sup> the court <sup>2</sup>[for] may<sup>2</sup> remand to the  
42 Superior Court, Chancery Division, Family Part if <sup>2</sup>[the juvenile  
43 can prove by clear and convincing evidence] it appears<sup>2</sup> that:

44 (a) the interests of the public and the best interests of the juvenile  
45 require access to programs or procedures uniquely available to that  
46 court; <sup>2</sup>[or] and<sup>2</sup>

1 (b) the interests of the public are no longer served by waiver <sup>2</sup>to  
2 the appropriate court<sup>2</sup>.<sup>1</sup>

3 <sup>2</sup>g. (1) The Juvenile Justice Commission, in consultation with  
4 the Attorney General, shall establish a program to collect, record,  
5 and analyze data regarding waiver of jurisdiction of a juvenile  
6 delinquency case by the Superior Court, Chancery Division, Family  
7 Part to an appropriate court and prosecuting authority. In  
8 furtherance of this program, the Juvenile Justice Commission shall,  
9 in cooperation with the Administrative Office of the Courts,  
10 Attorney General, and county prosecutors, collect data related to the  
11 decision to seek waiver of jurisdiction of a juvenile delinquency  
12 case, which shall include but not be limited to data concerning:

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

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

18 (c) case processing times; and

19 (d) waiver rates by race and ethnicity.

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

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

30 <sup>1</sup>2. Section 17 of P.L.1982, c.77 (C.2A:4A-36) is amended to  
31 read as follows:

32 a. If the court waives jurisdiction over a case and refers that  
33 case to the appropriate court and prosecuting authority, there shall  
34 be a hearing before the court waiving jurisdiction to decide whether  
35 to **[remand]** detain the juvenile **[to a juvenile or adult detention**  
36 **facility. The decision]** pending resolution of the case. If detention  
37 is deemed necessary, there shall be a presumption that the juvenile  
38 shall be detained in a <sup>2</sup>county<sup>2</sup> juvenile detention facility, unless  
39 good cause is shown that it is necessary to detain the juvenile in a  
40 <sup>2</sup>**[State]** county jail or other county<sup>2</sup> correctional facility <sup>2</sup>in which  
41 adults are incarcerated<sup>2</sup> .

42 b. Upon conviction in the appropriate court and where  
43 detention pending sentencing is deemed necessary, there shall be a  
44 presumption that the juvenile shall be detained in a <sup>2</sup>county<sup>2</sup>  
45 juvenile detention facility, unless good cause is shown that it is  
46 necessary to detain the juvenile in a <sup>2</sup>**[State]** county jail or other  
47 county<sup>2</sup> correctional facility<sup>2</sup>in which adults are incarcerated<sup>2</sup> .



1       c. Good cause under this section shall be based on the best  
2 interests of the juvenile and protection of the public, and shall take  
3 into account <sup>3</sup>such<sup>3</sup> factors **[as]** <sup>3</sup>[,] <sup>3</sup>including but not limited  
4 to, the juvenile's age and maturity, the nature and circumstances of  
5 the offense charged or for which the juvenile was convicted, the  
6 juvenile's prior offense history, the programs available at juvenile  
7 detention facilities, and any other relevant factors.

8       **[b. No]** d. A juvenile who has been waived to an appropriate  
9 adult court [may] shall not be remanded to [an adult detention]  
10 <sup>3</sup>**[a]** <sup>3</sup>a<sup>2</sup> **[State]** county jail or other county<sup>2</sup> correctional facility<sup>2</sup> in  
11 which adults are incarcerated<sup>2</sup> prior to the hearing provided for in  
12 subsection a. of this section.<sup>1</sup>

13 (cf: P.L.1982, c.77, s.17)

14  
15       <sup>1</sup>3. Section 25 of P.L.1982, c.77 (C.2A:4A-44) is amended to  
16 read as follows:

17       25. Incarceration--Aggravating and mitigating factors.

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

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

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

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

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

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

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

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

46       (h) The fact that the juvenile knowingly conspired with others as  
47 an organizer, supervisor, or manager to commit continuing criminal

1 activity in concert with two or more persons and the circumstances  
2 of the crime show that he has knowingly devoted himself to  
3 criminal activity as part of an ongoing business activity;

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

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

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

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

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

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

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

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

19 (d) The juvenile acted under a strong provocation;

20 (e) There were substantial grounds tending to excuse or justify  
21 the juvenile's conduct, though failing to establish a defense;

22 (f) The victim of the juvenile's conduct induced or facilitated its  
23 commission;

24 (g) The juvenile has compensated or will compensate the victim  
25 for the damage or injury that the victim has sustained, or will  
26 participate in a program of community service;

27 (h) The juvenile has no history of prior delinquency or criminal  
28 activity or has led a law-abiding life for a substantial period of time  
29 before the commission of the present act;

30 (i) The juvenile's conduct was the result of circumstances  
31 unlikely to recur;

32 (j) The character and attitude of the juvenile indicate that the  
33 juvenile is unlikely to commit another delinquent or criminal act;

34 (k) The juvenile is particularly likely to respond affirmatively to  
35 noncustodial treatment;

36 (l) The separation of the juvenile from the juvenile's family by  
37 incarceration of the juvenile would entail excessive hardship to the  
38 juvenile or the juvenile's family;

39 (m) The willingness of the juvenile to cooperate with law  
40 enforcement authorities;

41 (n) The conduct of the juvenile was substantially influenced by  
42 another person more mature than the juvenile.

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

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

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

3 (1) Juveniles age 11 or under unless adjudicated delinquent for  
4 the crime of arson or a crime which, if committed by an adult,  
5 would be a crime of the first or second degree; and

6 (2) Juveniles who are developmentally disabled as defined in  
7 paragraph (1) of subsection a. of section 3 of P.L.1977, c.82  
8 (C.30:6D-3).

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

- |   |          |
|---|----------|
| 21 (a) Murder under 2C:11-3a(1) or (2)          | 20 years |
| 22 (b) Murder under 2C:11-3a(3)                 | 10 years |
| 23 (c) Crime of the first degree, except murder | 4 years  |
| 24 (d) Crime of the second degree               | 3 years  |
| 25 (e) Crime of the third degree                | 2 years  |
| 26 (f) Crime of the fourth degree               | 1 year   |
| 27 (g) Disorderly persons offense               | 6 months |

28 (2) Except as provided in subsection e. of section 24 of  
29 P.L.1982, c.77 (C.2A:4A-43), the period of confinement shall  
30 continue until the appropriate paroling authority determines that  
31 such a person should be paroled; except that in no case shall the  
32 period of confinement and parole exceed the maximum provided by  
33 law for such offense. However, if a juvenile is approved for parole  
34 prior to serving one-third of any term imposed for any crime of the  
35 first, second or third degree, including any extended term imposed  
36 pursuant to paragraph (3) or (4) of this subsection, or one-fourth of  
37 any term imposed for any other crime the granting of parole shall be  
38 subject to approval of the sentencing court. Prior to approving  
39 parole, the court shall give the prosecuting attorney notice and an  
40 opportunity to be heard. If the court denies the parole of a juvenile  
41 pursuant to this paragraph it shall state its reasons in writing and  
42 notify the parole board, the juvenile and the juvenile's attorney. The  
43 court shall have 30 days from the date of notice of the pending  
44 parole to exercise the power granted under this paragraph. If the  
45 court does not respond within that time period, the parole will be  
46 deemed approved.

47 Any juvenile committed under this act who is released on parole  
48 prior to the expiration of the juvenile's maximum term may be

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

13 (3) Upon application by the prosecutor, the court may sentence a  
14 juvenile who has been convicted of a crime of the first, second, or  
15 third degree if committed by an adult, to an extended term of  
16 incarceration beyond the maximum set forth in paragraph (1) of this  
17 subsection, if it finds that the juvenile was 'previously' adjudged  
18 delinquent on at least two separate occasions, for offenses which, if  
19 committed by an adult, would constitute a crime of the first or  
20 second degree **】, and was previously committed to an adult or**  
21 **juvenile facility】**. The extended term shall not exceed five  
22 additional years for an act which would constitute murder and shall  
23 not exceed **【two】 three** additional years for all other crimes of the  
24 first degree **【or】 and shall not exceed two additional years for a**  
25 **crime of the** second degree, if committed by an adult, and one  
26 additional year for a crime of the third degree, if committed by an  
27 adult.

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

36 (5) Every disposition that includes a term of incarceration shall  
37 include a term of post-incarceration supervision equivalent to one-  
38 third of the term of incarceration imposed. During the term of post-  
39 incarceration supervision the juvenile shall remain in the  
40 community and in the legal custody of the Juvenile Justice  
41 Commission established pursuant to section 2 of P.L.1995, c.284  
42 (C.52:17B-170) in accordance with the rules of the parole board,  
43 unless the appropriate parole board panel determines that post-  
44 incarceration supervision should be revoked and the juvenile  
45 returned to custody in accordance with the procedures and standards  
46 set forth in sections 15 through 21 of P.L.1979, c.441 (C.30:4-  
47 123.59 through C.30:4-123.65). The term of post-incarceration  
48 supervision shall commence upon release from incarceration or

1 parole, whichever is later. A term of post-incarceration supervision  
2 imposed pursuant to this paragraph may be terminated by the  
3 appropriate parole board panel if the juvenile has made a  
4 satisfactory adjustment in the community while on parole or under  
5 such supervision, if continued supervision is not required and if the  
6 juvenile has made full payment of any fine or restitution.<sup>1</sup>

7 (cf: P.L.2001, c.408, s.4)

8  
9 <sup>3</sup>~~1~~~~3.~~ 4.<sup>1</sup> Section 26 of P.L.1982, c.77 (C.2A:4A-45) is  
10 amended to read as follows:

11 26. Retention of jurisdiction.

12 a. The court shall retain jurisdiction over any case in which it  
13 has entered a disposition under paragraph 7 of subsection b. or  
14 subsection c. of section 24 of P.L.1982, c.77 (C.2A:4A-43) or under  
15 section 25 of P.L.1982, c.77 (C.2A:4A-44) for the duration of that  
16 disposition of commitment or incarceration and may substitute any  
17 disposition otherwise available to it under section 24 of P.L.1982,  
18 c.77 (C.2A:4A-43) other than incarceration.

19 b. Except as provided for in subsection a., the court shall retain  
20 jurisdiction over any case in which it has entered a disposition  
21 under section 24 of P.L.1982, c.77 (C.2A:4A-43) and may at  
22 anytime for the duration of that disposition, if after hearing, and  
23 notice to the prosecuting attorney, it finds violation of the  
24 conditions of the order of disposition, substitute any other  
25 disposition which it might have made originally.

26 c. The court may by its order retain jurisdiction in any other  
27 case.

28 d. Notwithstanding the administrative grievance procedure set  
29 forth in regulations promulgated by the Executive Director of the  
30 Juvenile Justice Commission, the juvenile may petition the court for  
31 modification of the disposition pursuant to this section or to compel  
32 the Juvenile Justice Commission to comply with the terms and  
33 conditions of that disposition.

34 (cf: P.L.1995, c.280,s.13)]<sup>3</sup>

35  
36 <sup>1</sup>~~4.~~ <sup>3</sup>~~5.~~ 4.<sup>3</sup> Section 7 of P.L.1995, c.284 (C.52:17B-175) is  
37 amended to read as follows:

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

45 b. Notwithstanding the commission's responsibility for State  
46 secure juvenile facilities and State juvenile facilities, the  
47 Department of Children and Families shall provide care and  
48 custody for juveniles placed under the care and custody or

1 committed to the department pursuant to paragraphs (5), (6) and (7)  
2 of subsection b. of section 24 of P.L.1982, c.77 (C.2A:4A-43).

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

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

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

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

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

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

25 e. The commission and the Commissioner of **the Department**  
26 **of** Corrections shall, consistent with applicable State and federal  
27 standards, formulate a plan setting forth procedures for transferring  
28 custody of any juvenile incarcerated in a juvenile facility who has  
29 reached the age of **16** 18 during confinement and whose  
30 continued presence in the juvenile facility threatens the public  
31 safety, the safety of juvenile offenders, or the ability of the  
32 commission to operate the program in the manner intended. The  
33 commission and the Commissioner of **the Department of**  
34 Corrections shall jointly adopt regulations pursuant to the  
35 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
36 seq.), establishing the procedures included in the plan. At a  
37 minimum, the plan shall require that:

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

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

42 (3) the juvenile be represented by <sup>2</sup>**counsel** the Office of the  
43 Public Defender, unless the juvenile chooses to be represented by  
44 nonprofit counsel or engage private counsel at the juvenile's  
45 expense<sup>2</sup>;

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

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

3 (cf: P.L.2006, c.47, s.193)

4  
5       <sup>1</sup>5] <sup>3</sup>6<sup>1</sup> 5.<sup>3</sup> (New section) a. A juvenile detained in, or  
6 sentenced to, a State juvenile correctional facility or county juvenile  
7 detention center shall not be subject to <sup>1</sup>solitary confinement]  
8 room restriction<sup>1</sup> unless the juvenile poses an immediate and  
9 substantial risk of harm to others or to the security of the facility,  
10 and all other less-restrictive options have been exhausted.

11       b. A juvenile may be subject to <sup>1</sup>solitary confinement]  
12 restriction<sup>1</sup> only for the minimum time required to address the  
13 safety risk and for a period that does not compromise the mental  
14 and physical health of the juvenile, but in no case shall a juvenile be  
15 held in <sup>1</sup>solitary confinement]  
16 room restriction<sup>1</sup> for more than  
17 eight consecutive waking hours without being released for at least  
18 two hours for recreation and exercise.

19       c. A juvenile who is 15 years of age or younger shall not be  
20 <sup>1</sup>held in solitary confinement]  
21 subject to room restriction<sup>1</sup> for  
22 more than two consecutive days. A juvenile who is 16 years of age  
23 or older but younger than 18 years of age shall not be <sup>1</sup>held in  
24 solitary confinement]  
25 subject to room restriction<sup>1</sup> for more than  
26 three consecutive days. A juvenile who is 18 years of age or older  
27 shall not be <sup>1</sup>held in solitary confinement]  
28 subject to room  
29 restriction<sup>1</sup> for more than five consecutive days. A juvenile shall  
30 not be <sup>1</sup>held in solitary confinement]  
31 subject to room restriction<sup>1</sup>  
32 for more than 10 total days in a calendar month.

33       d. Juveniles subject to <sup>1</sup>solitary confinement]  
34 room  
35 restriction<sup>1</sup> shall continue to receive health, mental health, and  
36 educational services.

37       e. Each State correctional facility or county juvenile detention  
38 facility shall document, in aggregate, the use of <sup>1</sup>solitary  
39 confinement]  
40 room restriction<sup>1</sup>, including the dates and duration of  
41 each occurrence, the reason for placement in <sup>1</sup>solitary  
42 confinement]  
43 room restriction<sup>1</sup>, and the race, age, and gender of the  
44 juvenile placed in <sup>1</sup>solitary confinement]  
45 room restriction<sup>1</sup>. 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 <sup>1</sup>solitary  
confinement]  
room restriction<sup>1</sup> or to continue <sup>1</sup>solitary  
confinement]  
room restriction<sup>1</sup>.

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

- 1 (2) published on the official Internet website of the Juvenile  
2 Justice Commission.
- 3 f. This section shall not prohibit the use of single-person  
4 rooms or cells for the housing of juveniles in State correctional or  
5 county juvenile detention centers.
- 6 g. This section does not apply to juveniles in court holding  
7 facilities or adult facilities.
- 8 h. Nothing in this section shall be construed to conflict with  
9 any law providing greater or additional protections to juveniles.
- 10 i. For the purposes of this section, <sup>1</sup>["solitary confinement"]  
11 "room restriction"<sup>1</sup> shall mean the placement of a juvenile in a State  
12 <sup>1</sup>juvenile<sup>1</sup> correctional facility or county juvenile detention center  
13 in a locked room or cell, alone or with one other person, for 22 to  
14 24 hours per day. <sup>1</sup>["Solitary confinement"] Room restriction<sup>1</sup> shall  
15 not include confinement of a juvenile in a single-person room or  
16 cell for brief periods of locked-room confinement necessary for  
17 institutional operations, including, but not limited to, shift changes,  
18 showering, and unit movements.
- 19
- 20 <sup>3</sup>[7.] <sup>6.</sup><sup>3</sup> Section 7 of P.L.1982, c.77 (C.2A:4A-26) is  
21 repealed.<sup>1</sup>
- 22
- 23 <sup>1</sup>[6.] <sup>3</sup>[8.<sup>1</sup>] <sup>7.</sup><sup>3</sup> This act shall take effect on the first day of the  
24 seventh month following enactment.