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## Document (1)

1. [NY CLS CPL § 722.21](#)

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Statutes and Legislation

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All Jurisdictions: New York

## [NY CLS CPL § 722.21](#)

Current through 2018 Chapters 1-321

***New York Consolidated Laws Service > Criminal Procedure Law (Pts. ONE — THREE) > Part THREE Special Proceedings and Miscellaneous Procedures (Titles P — U) > Title U Special Proceedings Which Replace, Suspend or Abate Criminal Actions (Arts. 720 — 730) > Article 722 Proceedings Against Juvenile Offenders and Adolescent Offenders; Establishment of Youth Part and Related Procedures (§§ 722.00 — 722.24)***

### § 722.21. Proceedings upon felony complaint; ***adolescent offender***

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. 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.
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.

## History

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L 2017, ch 59, § 1-a (Part WWW), eff Oct 1, 2018.

Annotations

## Notes

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### Editor's Notes

**Laws 2017, ch 59, § 106 (Part WWW)**, eff April 10, 2017, provides:

§ 106. This act shall take effect immediately; provided that:

## NY CLS CPL § 722.21

a. sections forty-eight and forty-eight-a of this act shall take effect on the one hundred eightieth day after this act shall have become a law and shall be deemed to apply to offenses committed prior to, on, or after such effective date;

b. sections one through thirty, thirty-one-a, thirty-one-b, thirty-two, thirty-five, thirty-six, thirty-eight, forty-a, forty-one, forty-three, forty-four, fifty-six, fifty-six-a, fifty-six-b, fifty-seven, fifty-nine, sixty-one through sixty-three, sixty-five, sixty-seven, sixty-nine, seventy, seventy-two, seventy-five through seventy-eight, seventy-nine, seventy-nine-b, eighty, eighty-one-b, eighty-two-a, ninety-nine, one hundred, one hundred-a and one hundred one of this act shall take effect October 1, 2018; provided however, that when the applicability of such provisions are based on the conviction of a crime or an act committed by a person who was seventeen years of age at the time of such offense such provisions shall take effect October 1, 2019;

c. sections one hundred two and one hundred four shall take effect April 1, 2018;

d. the amendments to subdivision 4 of [section 353.5 of the family court act](#) made by section seventy-two of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 11 of subpart A of part G of chapter 57 of the laws of 2012, as amended, when upon such date the provisions of section seventy-three of this act shall take effect;

e. the amendments to the second undesignated paragraph of subdivision 4 of [section 246 of the executive law](#) made by section one hundred two of this act shall be subject to the expiration and reversion of such undesignated paragraph as provided in subdivision (aa) of section 427 of chapter 55 of the laws of 1992, as amended, when upon such date section one hundred three of this act shall take effect; provided, however if such date of reversion is prior to April 1, 2018, section one hundred three of this act shall take effect on April 1, 2018; and

f. the amendments to [section 153-k of the social services law](#) made by section one hundred-a of this act shall not effect the repeal of such section and shall be deemed to repeal therewith.

## Research References & Practice Aids

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### Hierarchy Notes:

[NY CLS CPL](#)

[NY CLS CPL, Pt. THREE, Title U, Art. 722](#)

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