

# Removal of a Misdemeanor

- If Supreme/County Court Youth Part (or DA) reduces an AO felony case to a misdemeanor, the misdemeanor case will be removed to Family Court *unless* DA files motion to prevent removal within 30 days of effecting reduction or receiving notice of reduction. *CPL 722.23(3)*
- If AO pleads guilty to a misdemeanor as part of a plea bargain, case remains in Youth Part. *PL 30.00(3)(d)(iii)*

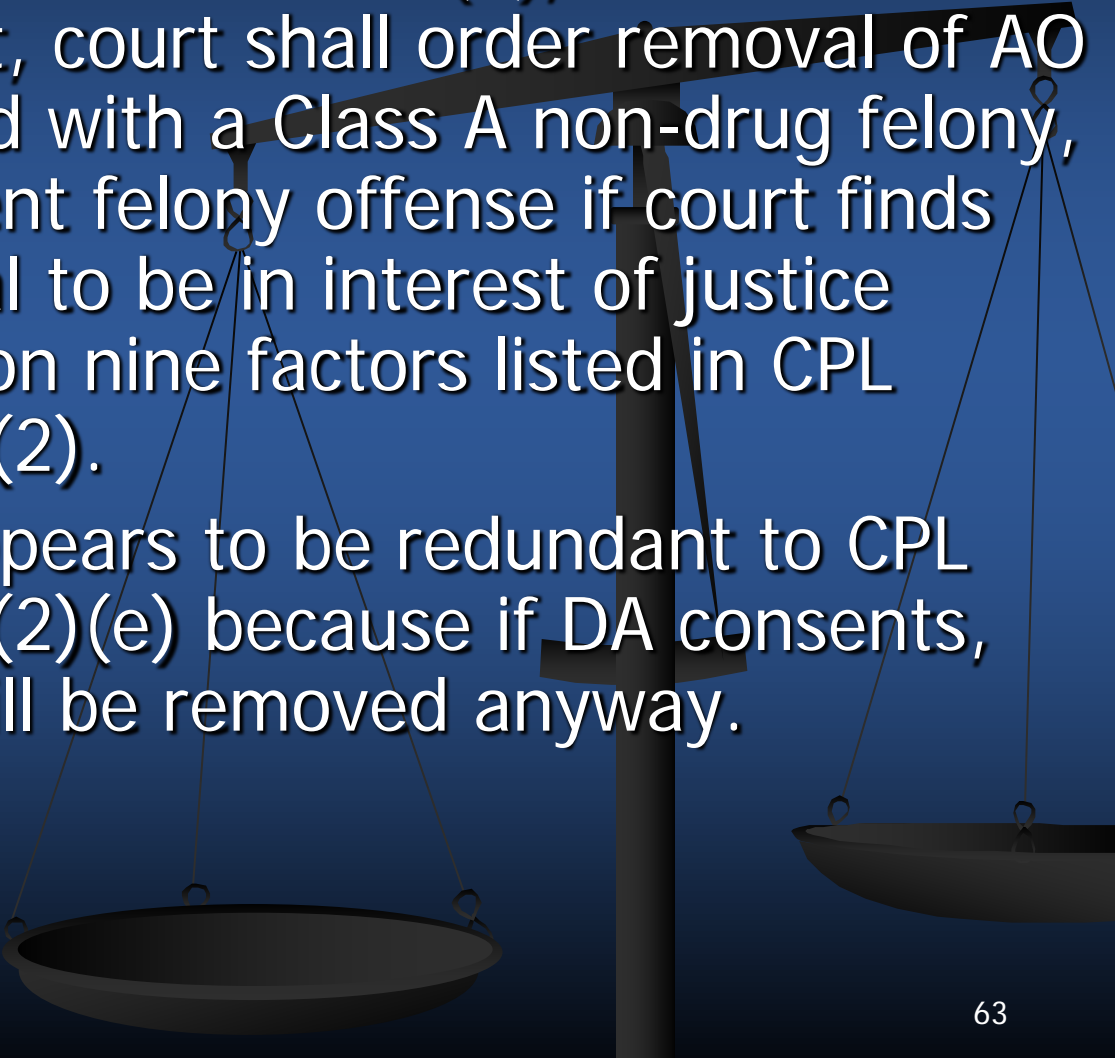
# Removal of AO Cases

(other than Class A felony non-drug cases, violent felonies under PL 70.02, JO-eligible crimes under CPL 1.20(42), and vehicle and traffic offenses) to Family Court

- Youth Part shall order removal unless it finds extraordinary circumstances. *CPL 722.23(1)(d)*
- To prevent automatic removal, DA must file a motion within thirty calendar days. *CPL 722.23(1)(a)*
- In any case, if all parties agree, Court may order removal. *CPL 722.23(1)(h)*

# Removal of AO Class A Felony Non-Drug Case Under CPL 722.23(2)

- These cases will be removed unless DA can prove by a preponderance of the evidence that the crime involves:
  1. Significant physical injury to a victim, or
  2. Defendant displayed a firearm, shotgun, rifle, or deadly weapon or
  3. Sex offense under PL Article 130.00
- Case may be removed if all parties agree. *CPL 722.23(2)(e)*

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- Also, per CPL 722.21(5), at DA's request, court shall order removal of AO charged with a Class A non-drug felony, or violent felony offense if court finds removal to be in interest of justice based on nine factors listed in CPL 722.22(2).
  - This appears to be redundant to CPL 722.23(2)(e) because if DA consents, case will be removed anyway.

# AO Removal to Family Court – Special Situations CPL 722.21(5)

- To remove –  
Murder Second Degree (PL 125.25),  
Rape First Degree (PL 130.35(1))(by forcible compulsion),  
Criminal Sexual Act First Degree (by forcible compulsion), or an  
Armed Felony as defined in CPL 1.20(41)(a),  
the following are **required**:  
Interest of Justice finding *and*  
The Court must consider the following factors:
  1. Mitigating circumstances *or*
  2. Defendant's participation was minor *or*
  3. Possible deficiencies in proof

# Removal of JO cases

The **Court** must find one of the following:

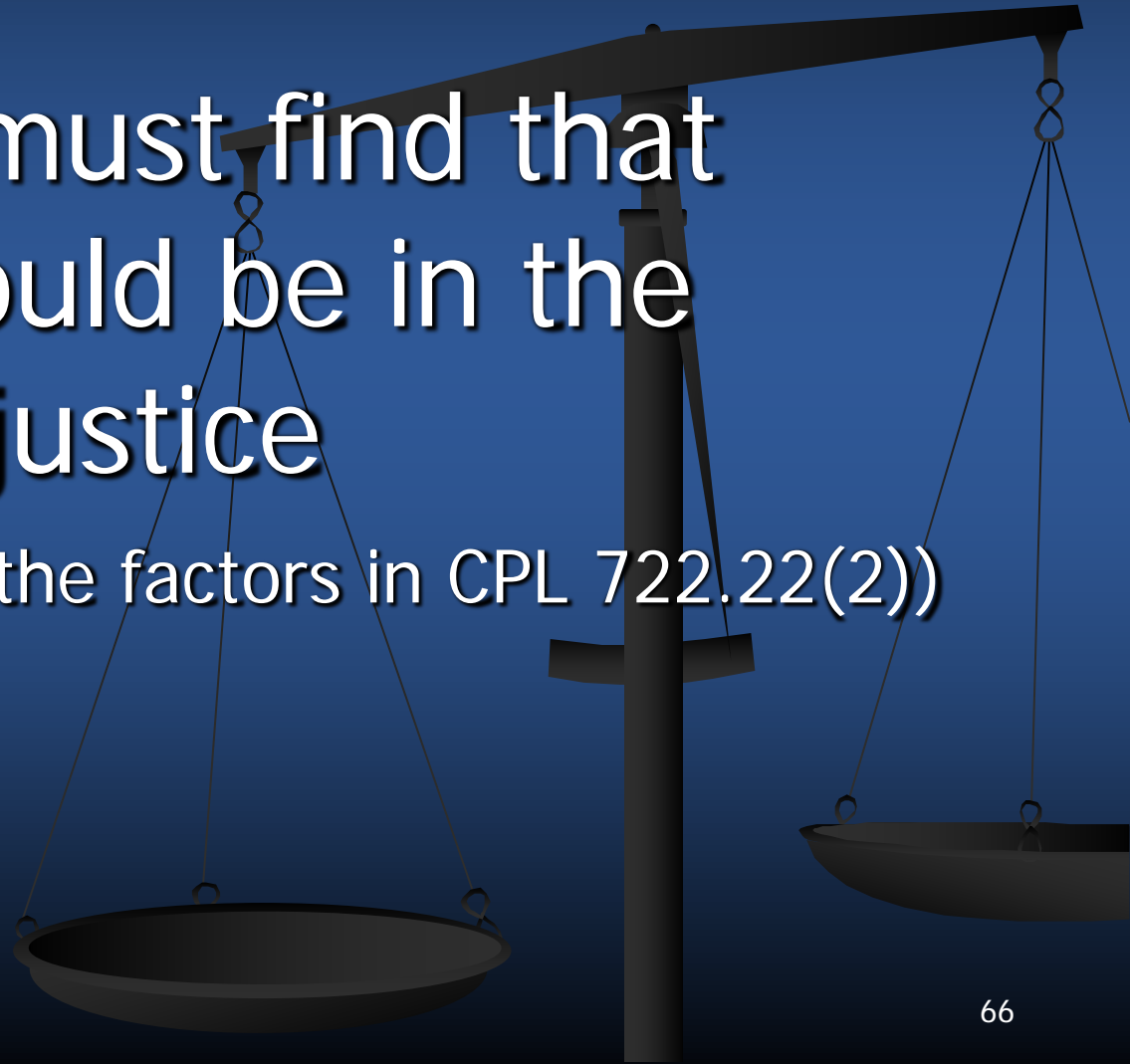
1. Mitigating circumstances
2. Defendant's participation was minor
3. Deficiency in proof

***AND***

# Removal of JO cases

The Court must find that  
removal would be in the  
interest of justice

(after considering the factors in CPL 722.22(2))



# JO Removals

For JO cases other than Murder 2nd, (forcible) Rape 1<sup>st</sup>, (forcible) Criminal Sexual Act 1<sup>st</sup>, or an armed felony, DA consent is *not* required for removal and only the nine factors of CPL 722.22(2) apply.



# WHAT IF THE REMOVAL ORDER IS INSUFFICIENT AS A PETITION

- If an AO or JO case is removed from the Youth Part without sufficient non-hearsay depositions, it is jurisdictionally insufficient and is subject to dismissal.
- At the initial appearance, The Presentment Agency must move to add depositions to the Removal Order to cure the defect. *Matter of Desmond J.*, 93 NY2d 949(1999).
- DESMOND J DOES NOT ADDRESS WHETHER WE CAN MOVE TO ADD THE DEPOSITIONS AT ANY OTHER TIME.
- The Respondent's failure to object to the insufficient removal order does not cure the defect, and the defect may be raised at any time, including on appeal. *Matter of Michael M.*, 3 NY3d 441(2004).

# REMOVAL AFTER PRELIMINARY HEARING or UPON GRAND JURY ACTION

- the *Michael M.* Court, in dicta, indicated that if a case is removed to Family Court after a preliminary Hearing, or upon action of the Grand Jury, testimony taken in these proceedings may be a sufficient substitute for non-hearsay depositions.
- If a case is removed from the Youth Part post indictment, the Indictment is sufficient as it has the same non-hearsay prima facie case sufficiency requirements as a petition.
- Grand Jury minutes must be sent over to Family Court within 30 days of removal. *FCA 311.4(7)*

# FAMILY COURT TIMING REQUIREMENTS APPLY

- Speedy initial appearance (FCA 320.2(1))
- Speedy Fact-Finding (FCA 340.1)
- Speedy Dispositional Hearing (FCA 350.1/350.2)



# FCA TIMING REQUIREMENTS, CONT.

- The date the Order of Removal under CPL 725.05 is filed with the Family Court becomes the date the Petition is filed.
- If the Respondent is detained, the Order of Removal must specify an appearance date not later than the next day that Family Court is in session. *CPL 725.05(7)*.
- If the Respondent isn't detained, the Order of Removal must specify a date within 10 days from the date of removal for the Respondent to appear in Family Court. *CPL 725.05(7)*

# Speedy Initial Appearance Issues

- Speedy initial appearance time begins to run upon filing the Order of Removal in Family Court.
- Failure to conduct a timely initial Appearance could result in the dismissal of the removal petition without prejudice to re-file, However, the felony would have to be re-commenced in the Youth Part and removed to the Family Court. *Matter of Robert O.*, 87 NY2d 9(1995).
- Speedy Fact Finding time continues to run even when the Petition is dismissed without prejudice. *Matter of Willie E.*, 88 NY2d 205 (1996), *Matter of Tommy C.*, 182 AD2d 312(2d Dept. 1992)

# Matter of Warren W.

- If a Designated Felony is removed from Adult Court to Family Court, the Family Court Clerk must **PROMINENTLY** mark the removal petition with a statement marking it to be a Designated Felony.
- Failure to do so will prevent the Respondent from being able to receive a Designated Felony disposition, including:
  - a. Least Restrictive standard does not apply at disposition;
  - b. 3 or 5 year restrictive placements;
  - c. Future ineligibility for YO status in a criminal matter.

*Matter of Warren W., 216*  
AD2d 225(1<sup>st</sup> Dept. 1995)

# MATTER OF Warren W. Continued

- If the case is removed without the marking and the Family Court Clerk fails to mark it, the Presentment Agency may move to have it so marked at the initial appearance in Family Court, or at some later point.
- Must be done prior to Fact Finding.
- The earlier the better, to give the Respondent proper notice in advance of the hearing.

# ONE SUGGESTED FIX

- Make sure your DA's Office has a list of JD Designated Felonies.
- Provide them with a form that has "Designated Felony Act Petition" in GIANT type, so that the ADA in the Youth Part can just attach the form to the Removal Order

ORDER OF REMOVAL TO FAMILY COURT  
JUVENILE OFFENDER

STATE OF NEW YORK  
COUNTY OF DUTCHESS  
CITY OF POUGHKEEPSIE COURT

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

v.

████████████████████

Defendant,

-----X

## DESIGNATED FELONY ACT PETITION

REQUEST TO TRANSFER  
JUVENILE OFFENDER

An accusatory instrument having been filed with this court alleging the above named defendant to be a juvenile offender and charging a violation of Section 160.10 Sub. 1 of the Penal Law, Robbery in the Second Degree, a Class C Felony, and an application having been made to transfer this case to the Family Court by the District Attorney of the County of Dutchess, appearing by \_\_\_\_\_, Esq., and on consent of the defendant, it appearing the transfer would be in the interest of justice;

NOW, THEREFORE, it is ORDERED, pursuant to CPL §180.75(4) that this matter be and it hereby is removed to the Family Court of the County of Dutchess and the defendant is to appear therein at ████████ on the ██████ of ████████ and Dutchess County Sheriff's Office Corrections Division is ordered to produce defendant at Family Court.

It is further ordered that all pleadings and proceedings be delivered forthwith and filed with the

Clerk of said Family Court.

\_\_\_\_\_  
Town/Village/City Court Judge

Dated: \_\_\_\_\_

Copies must be sent to the following: \_\_\_ Defendant; \_\_\_ Court; \_\_\_ Agency; \_\_\_ District Attorney

NOTE: A copy of this order must also be filed with the division of Criminal Justice Services and additional documents are to be filed pursuant to CPL §725.20.



# AO REMOVALS AS DESIGNATED FELONIES

- The DA's Office is not likely to know about an AO's prior JD cases that would serve to enhance a felony removed from the Youth Part into a JD Designated Felony Act **unless you tell them**. See *FCA 301.2(8) v* and *FCA 301.2(8)vi*.
- For the Removal Order to be sufficient, along with marking the order as a Designated Felony Act Petition, certified copies of the prior orders of Fact-finding must also be attached.
- Either the ADA must subpoena the orders of fact-finding from the Family Court Clerk and attach them pre-removal, or it will be incumbent upon the Presentment Agency to make sure this is done at the initial appearance in Family Court.

# EXTRAORDINARY CIRCUMSTANCES

- For an AO charged with a Felony other than a Class A non-drug case, a Violent Felony under CPL 70.02, JO-eligible crimes under CPL 1.20(42), and vehicle and traffic offenses, the Youth Part shall order removal unless it finds **extraordinary circumstances**. *CPL 722.23(1)(d)*
- The DA must file a motion to prevent removal within 30 days of preliminary appearance in the Youth Part.
- Extraordinary Circumstances is not defined in the CPL.
- The existence of a significant JD history, especially felony adjudications, prior placements, failed attempts at probation or a flight history may constitute Extraordinary Circumstances.
- Co-Operate with the ADA in the Youth Part to alert them to these issues, so they can subpoena the required documents to make their motion.

# Practical Note



Designated Felony Jurisdiction.

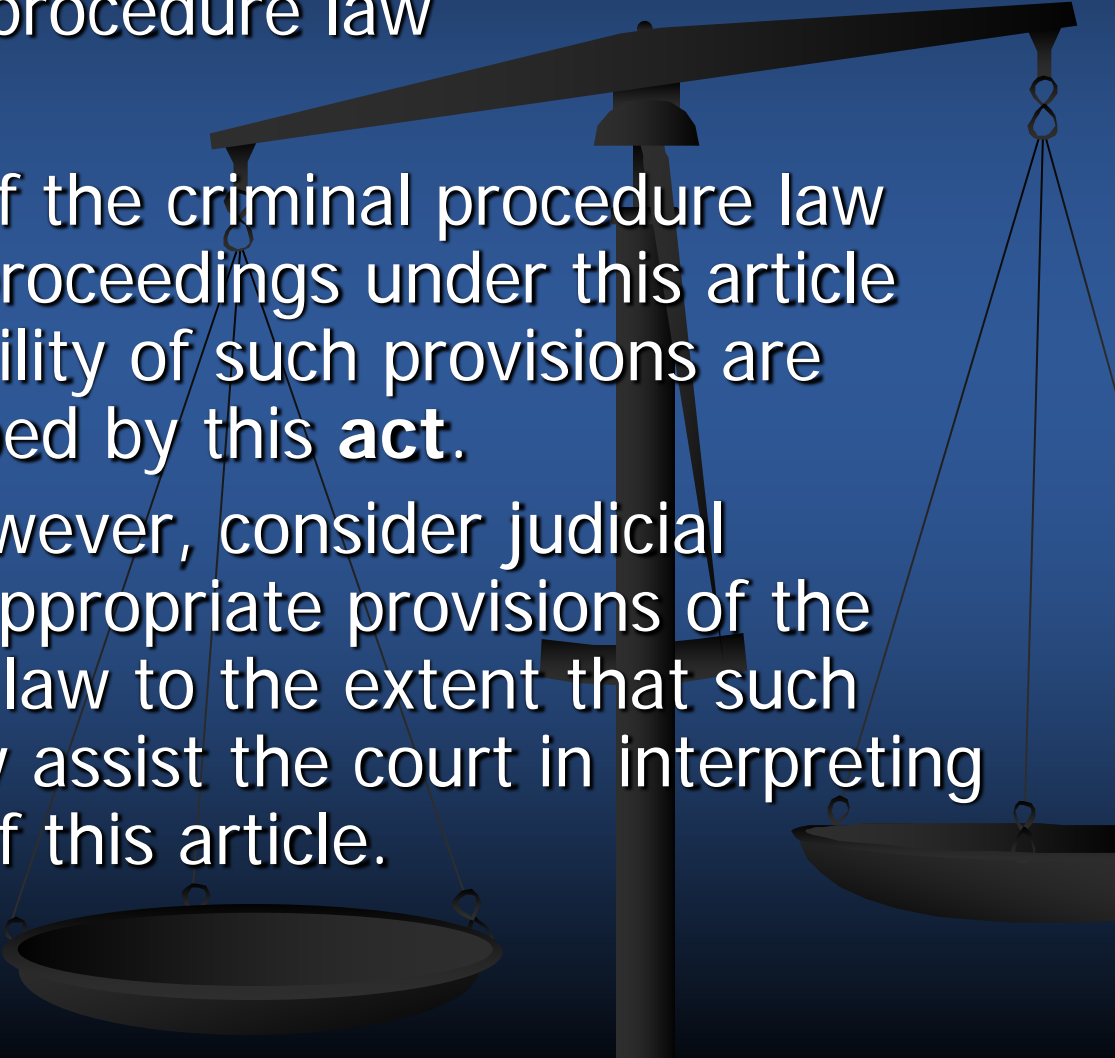
Where a Respondent can be a JO, the DA has the initial jurisdiction

The Presentment Agency cannot file a Designated Felony Petition

The only way to get a DF Charge is to bring the matter in local criminal court and consent to removal pursuant to CPL §180.75

(See Matter of Raymond G, 93 N.Y.2d 531)

# CPL to FCA

- § 303.1. Criminal procedure law
  - 1. The provisions of the criminal procedure law shall not apply to proceedings under this article unless the applicability of such provisions are specifically prescribed by this **act**.
  - 2. A court may, however, consider judicial interpretations of appropriate provisions of the criminal procedure law to the extent that such interpretations may assist the court in interpreting similar provisions of this article.
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# SCI Plea and Removal to Family Court

- Permissible pursuant to CPL 220.10(g)3 and 725.05(5)
- Can enter an SCI in a superior court
- Defense makes a motion and court considers whether or not it is appropriate to transfer
- If approved, Court then removes case to Family Court for appearance
  - Eliminates fact and plea issues
  - Vacate bail in Superior Court, can put on RUS, ROR or house arrest between court dates
  - Essentially convert conviction to adjudication
  - Holds accountable in adult court, but can get all the services from Family Court
  - Appear on SCI and order a PDI

