

SENATE, No. 2211

STATE OF NEW JERSEY

INTRODUCED JUNE 19, 1997

By Senators GIRGENTI and KOSCO

1 AN ACT concerning the waiver of juvenile cases and amending
2 P.L.1982, c.77.

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

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

9 7. Referral to another court without juvenile's consent.

10 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 years of age or older at the time of the
16 charged delinquent act; and

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

20 (a) Criminal homicide other than death by auto, strict liability for
21 drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which would
22 constitute a crime of the first degree, carjacking, aggravated sexual
23 assault, sexual assault, aggravated assault which would constitute a
24 crime of the second degree, kidnapping or aggravated arson; or

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

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

30 (d) An offense against a person committed in an aggressive, violent
31 and willful manner, other than an offense enumerated in subsection
32 a.(2)(a) of this section, or the unlawful possession of a firearm,
33 destructive device or other prohibited weapon, arson or death by auto
34 if the juvenile was operating the vehicle under the influence of an

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

Matter underlined thus is new matter.

1 intoxicating liquor, narcotic, hallucinogenic or habit producing drug;
2 or

3 (e) A violation of N.J.S.2C:35-3, N.J.S.2C:35-4, or N.J.S.2C:35-5;
4 or

5 (f) Crimes which are a part of a continuing criminal activity in
6 concert with two or more persons and the circumstances of the crimes
7 show the juvenile has knowingly devoted himself to criminal activity
8 as a source of livelihood; or

9 (g) An attempt or conspiracy to commit any of the acts enumerated
10 in paragraph (a), (d) or (e) of this subsection; or

11 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of
12 the New Jersey Statutes; ~~and~~ or

13 (i) Possession of a firearm with a purpose to use it unlawfully
14 against the person of another under subsection a. of N.J.S.2C:39-4,
15 or the crime of aggravated assault, aggravated criminal sexual contact,
16 burglary or escape if, while in the course of committing or attempting
17 to commit the crime including the immediate flight therefrom, the
18 juvenile possessed a firearm; and

19 (3) Except with respect to any of the acts enumerated in
20 ~~[subsection a.(2)(a)]subparagraphs (a) or (i) of paragraph (2) of~~
21 subsection a. of this section, or with respect to any acts enumerated in
22 subparagraph (e) of paragraph (2) of subsection a. of this section
23 which involve the distribution for pecuniary gain of any controlled
24 dangerous substance or controlled substance analog while on any
25 property used for school purposes which is owned by or leased to any
26 school or school board, or within 1,000 feet of such school property
27 or while on any school bus, or any attempt or conspiracy to commit
28 any of those acts, the State has shown that the nature and
29 circumstances of the charge or the prior record of the juvenile are
30 sufficiently serious that the interests of the public require waiver.

31 [However, if in any case the juvenile can show that the probability
32 of his rehabilitation by the use of the procedures, services and facilities
33 available to the court prior to the juvenile reaching the age of 19
34 substantially outweighs the reasons for waiver, waiver shall not be
35 granted.]

36 b. [In every case where there is a motion seeking waiver, the
37 prosecutor shall within a reasonable time thereafter file a statement
38 with the Attorney General setting forth the basis for the motion. In
39 addition, the court shall, in writing, state its reasons for granting or
40 denying the waiver motion. The Attorney General shall compile this
41 information and report its findings to the Legislature 18 months after
42 the effective date of this act with the objective of developing, where
43 appropriate, guidelines as to the waiver of juveniles from the Family
44 Part.] ~~(Deleted by amendment, P.L. , c. .)~~

45 c. An order referring a case shall incorporate therein not only the
46 alleged act or acts upon which the referral is premised, but also all

1 other delinquent acts arising out of or related to the same transaction.

2 d. A motion seeking waiver shall be filed by the prosecutor within
3 30 days of receipt of the complaint. This time limit shall not, except
4 for good cause shown, be extended.

5 e. If the juvenile can show that the probability of his rehabilitation
6 by the use of the procedures, services and facilities available to the
7 court prior to the juvenile reaching the age of 19 substantially
8 outweighs the reasons for waiver, waiver shall not be granted. This
9 subsection shall not apply with respect to any of the acts enumerated
10 in subparagraphs (a) or (i) of paragraph (2) of subsection a. of this
11 section or with respect to any acts enumerated in subparagraph (e) of
12 paragraph (2) of subsection a. of this section which involve the
13 distribution for pecuniary gain of any controlled dangerous substance
14 or controlled dangerous substance analog while on any property used
15 for school purposes which is owned by or leased to any school or
16 school board, or within 1,000 feet of such school property or while on
17 any school bus, or any attempt or conspiracy to commit any of these
18 acts.

19 (cf: P.L.1991, c.91, s.6)

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21 2. This act shall take effect immediately.

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STATEMENT

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26 This bill is intended to enhance public safety by shortening the
27 process by which the cases of juvenile offenders charged with the most
28 serious offenses may be waived from the jurisdiction of the Family
29 Court.

30 The bill would add carjacking and, when committed with a firearm,
31 certain other serious offenses to those which may be presumptively
32 waived, upon motion by the prosecutor, when the juvenile is 14 years
33 of age or older. The latter offenses include possession of a firearm
34 with a purpose to use it unlawfully against another person, aggravated
35 assault, aggravated criminal sexual contact, burglary and escape.

36 The bill also removes from the waiver decision in the most serious
37 cases the issue of whether a juvenile may be rehabilitated by the age
38 of 19. Current law precludes a waiver in many instances if the
39 probability of rehabilitation outweighs the reasons for a waiver. Under
40 the bill, this probability would not be a deciding factor when the
41 offense involved criminal homicide, first-degree robbery, carjacking,
42 sexual assault, aggravated assault, kidnapping, aggravated arson or
43 certain drug crimes and crimes committed with a firearm.

44 The bill also deletes a reporting requirement for courts and county
45 prosecutors which was enacted in the original 1982 law to provide

1 information for a report by the Attorney General to the Legislature
2 18 months later.

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7 Eases conditions for trial of certain juvenile offenders as adults.