

2A:4A-26.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2015 **CHAPTER:** 89

NJSA: 2A:4A-26.1 (Makes certain reforms to juvenile justice system)

BILL NO: S2003 (Substituted for A4299)

SPONSOR(S) Nellie Pou and others

DATE INTRODUCED: April 28, 2014

COMMITTEE: **ASSEMBLY:** Law & Public Safety
Appropriations

SENATE: Law & Public Safety
Budget & Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 25, 2015
SENATE: June 29, 2015

DATE OF APPROVAL: July 18, 2015

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Third Reprint enacted) Yes

S2003

SPONSOR'S STATEMENT: (Begins on page 7 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Law & Public Safety
Appropriations

SENATE: Yes Law & Public Safety
Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes 5-20-2015
6-17-201515

A4299

SPONSOR'S STATEMENT: (Begins on page 7 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Law & Public Safety
Appropriations

SENATE: No

(continued)

FLOOR AMENDMENT STATEMENT:

No

LEGISLATIVE FISCAL ESTIMATE:

Yes 6/17/2015

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

FOLLOWING WERE PRINTED:

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REPORTS:

Yes

Memorandum to the New Jersey Law Revision Commission re: State in Interest of K.O. - Juvenile sentencing
By Frank N. Ricigliani
Trenton, N.J.: New Jersey Law Revision Commission, 2014.
Library call number: 974.90 L415, 2014b
Available online at: <https://dSPACE.njstatelib.org/handle/10929/31971>

Draft final report relating to juvenile sentencing: November 10, 2014
by New Jersey Law Revision Commission
Newark, N.J.: New Jersey Law Revision Commission, 2014
Library call number: 974.90 L415, 2014m
Available online at: <https://dSPACE.njstatelib.org/handle/10929/32871>

HEARINGS:

Yes

Committee meeting of Senate Law and Public Safety Committee: Senate bill no. 2003, makes certain reforms to juvenile justice system; Senate bill no. 2718, requires Attorney General to appoint special prosecutor when criminal complaint is filed against law enforcement officer
March 12, 2015, Trenton, New Jersey, meeting recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit.
by New Jersey. Legislature. Senate. Law and Public Safety Committee
Library call number: 974.90 P766, 2015
Available online at: <https://dSPACE.njstatelib.org/handle/10929/34814>

NEWSPAPER ARTICLES:

No

RWH

§1 –
C.2A:4A-26.1
§5 –
C.52:17B-171.13
§6 - Repealer
§7 - Note

P.L.2015, CHAPTER 89, *approved August 10, 2015*
Senate, No. 2003 (*Third Reprint*)

1 AN ACT concerning juvenile justice ¹~~and~~,¹ amending and
2 supplementing various parts of the statutory law ¹, and repealing
3 section 7 of P.L.1982, c.77¹.
4

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

8 ¹~~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

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:

¹Senate SLP committee amendments adopted March 12, 2015.

²Senate SBA committee amendments adopted May 14, 2015.

³Assembly ALP committee amendments adopted June 1, 2015.

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

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

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

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

16 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of
17 the New Jersey Statutes; or

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

24 (j) Computer criminal activity which would be a crime of the
25 first or second degree pursuant to section 4 or section 10 of
26 P.L.1984, c.184 (C.2C:20-25 or C.2C:20-31); and

27 (3) Except with respect to any of the acts enumerated in
28 subparagraph (a), (i) or (j) of paragraph (2) of subsection a. of this
29 section, or with respect to any acts enumerated in subparagraph (e)
30 of paragraph (2) of subsection a. of this section which involve the
31 distribution for pecuniary gain of any controlled dangerous
32 substance or controlled substance analog while on any property
33 used for school purposes which is owned by or leased to any school
34 or school board, or within 1,000 feet of such school property or
35 while on any school bus, or any attempt or conspiracy to commit
36 any of those acts, the State has shown that the nature and
37 circumstances of the charge or the prior record of the juvenile are
38 sufficiently serious that the interests of the public require waiver.

39 b. (Deleted by amendment, P.L.1999, c.373).

40 c. An order referring a case shall incorporate therein not only
41 the alleged act or acts upon which the referral is premised, but also
42 all other delinquent acts arising out of or related to the same
43 transaction.

44 d. A motion seeking waiver shall be filed by the prosecutor
45 within **[30]** 60 days of receipt of the complaint. This time limit
46 shall not, except for good cause shown, be extended.

47 e. **[**If the juvenile can show that the probability of his
48 rehabilitation by the use of the procedures, services and facilities

1 available to the court prior to the juvenile reaching the age of 19
2 substantially outweighs the reasons for waiver, waiver shall not be
3 granted] A motion for waiver shall not be granted unless the
4 prosecution proves, by clear and convincing evidence, that the
5 reasons for waiver outweigh the probability of the juvenile's
6 rehabilitation by the use of the procedures, services and facilities
7 available to the court prior to the juvenile reaching the age of 26.
8 This subsection shall not apply with respect to a juvenile 16 years
9 of age or older who is charged with committing any of the acts
10 enumerated in subparagraph (a), (i) or (j) of paragraph (2) of
11 subsection a. of this section or with respect to a violation of
12 N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998, c.26
13 (C.2C:39-4.1).

14 f. The Attorney General shall develop for dissemination to the
15 county prosecutors those guidelines or directives deemed necessary
16 or appropriate to ensure the uniform application of this section
17 throughout the State.

18 (cf: P.L.2007, c.341, s.3)]¹

19

20 ¹[2. (New section) When the court imposes a term of
21 incarceration pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-
22 44), it shall consider the rehabilitative, treatment, and educational
23 needs of the juvenile and may order the Juvenile Justice
24 Commission to provide the juvenile with the following services and
25 assistance to address these needs:

26 a. Academic instruction and academic counseling, consistent
27 with State and federal law;

28 b. Vocational education and training;

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

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

34 e. Mental health treatment or counseling;

35 f. Medical and dental care and treatment;

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

40 h. Work programs that are designed to provide job skills and
41 specific employment training to enhance the employment readiness
42 of the juvenile;

43 i. Re-entry services to assist the juvenile in returning to the
44 community; and

45 j. Any other services or assistance reasonably related to the
46 rehabilitation of the juvenile.]¹

47

1 ¹1. (New section) a. A prosecutor seeking waiver of jurisdiction
2 of a juvenile delinquency case by the Superior Court, Chancery
3 Division, Family Part to an appropriate court and prosecuting
4 authority ²without the consent of the juvenile² shall file a motion
5 within 60 days after the receipt of the complaint, which time may be
6 extended for good cause shown. ²The motion shall be accompanied
7 by a written statement of reasons clearly setting forth the facts used
8 in assessing all factors contained in paragraph (3) of subsection c.
9 of this section, together with an explanation as to how evaluation of
10 those facts support waiver for each particular juvenile.²

11 b. At a hearing, the court shall receive the evidence offered by
12 the State and by the juvenile ²[, limited to the issue of probable
13 cause. The court also shall permit cross-examination of any
14 witnesses]² . ²The State shall provide proof to satisfy the
15 requirements set forth in paragraphs (1) and (2) of subsection c. of
16 this section. The court also shall review whether the State
17 considered the factors set forth in paragraph (3) of subsection c. of
18 this section.²

19 c. ²[The] Except as provided in paragraph (3) of this subsection,
20 the² court shall waive jurisdiction of a juvenile delinquency case
21 without the juvenile's consent and shall refer the case to the
22 appropriate court and prosecuting authority having jurisdiction if:

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

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

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

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

30 (c) first degree robbery;

31 (d) carjacking;

32 (e) aggravated sexual assault;

33 (f) sexual assault;

34 (g) second degree aggravated assault;

35 (h) kidnapping;

36 (i) aggravated arson;

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

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

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

- 1 (m) a violation of section 1 of P.L.1998, c.26 (C.2C:39-4.1)
2 (Weapons Possession while Committing certain CDS Offenses);
3 ²**[or]**²
- 4 (n) an attempt or conspiracy to commit any of the crimes
5 enumerated in subparagraphs (a) through (m) of this paragraph;
6 ²**[and]** or
- 7 (o) a crime committed at a time when the juvenile previously had
8 been sentenced and confined in an adult correctional facility.²
- 9 (3) ²**[the prosecution proves, by clear and convincing evidence,**
10 that the nature and circumstances of the charge or the juvenile's
11 prior record are sufficiently serious that the interests of the public
12 require waiver. The court shall consider the following factors when
13 deciding whether the interests of the public require waiver] **The**
14 court may deny a motion by the prosecutor to waive jurisdiction of
15 a juvenile delinquency case if it is clearly convinced that the
16 prosecutor abused his discretion in considering the following
17 factors in deciding whether to seek a waiver²:
- 18 (a) The nature and circumstances of the offense charged;
19 (b) Whether the offense was against a person or property,
20 allocating more weight for crimes against the person;
21 (c) Degree of the juvenile's culpability;
22 (d) Age ²and maturity² of the juvenile;
23 (e) ²**[Diagnoses concerning mental capacity or cognitive**
24 development of the juvenile, or any] **Any² classification that the**
25 juvenile is eligible for special education ²to the extent this
26 information is provided to the prosecution by the juvenile or by the
27 court² :
- 28 (f) ²**[Maturity of the juvenile;**
29 (g)]² Degree of criminal sophistication exhibited by the juvenile;
30 ²**[**(h)**]** ³**[g.]² (g)³ Nature and extent of any prior history of**
31 delinquency of the juvenile ²and dispositions imposed for those
32 adjudications² :
- 33 ²**(h) If the juvenile previously served a custodial disposition in a**
34 State juvenile facility operated by the Juvenile Justice Commission,
35 and the response of the juvenile to the programs provided at the
36 facility to the extent this information is provided to the prosecution
37 by the Juvenile Justice Commission;²
- 38 (i) Current or prior involvement of the juvenile with child
39 welfare agencies;
40 (j) Evidence of mental health concerns, substance abuse, or
41 emotional instability of the juvenile ²; and
- 42 (k) Moral development of the juvenile] to the extent this
43 information is provided to the prosecution by the juvenile or by the
44 court; and
- 45 (k) If there is an identifiable victim, the input of the victim or
46 victim's family.

1 The Attorney General may develop for dissemination to the
2 county prosecutors those guidelines or directives deemed necessary
3 or appropriate to ensure the uniform application of this section
4 throughout the State².

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

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

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

16 (1) The case ²[will] shall² proceed as if it originated in that
17 court and shall be subject to the sentencing provisions available to
18 that court; provided, however, upon conviction for any offense
19 which is subject to waiver pursuant to paragraph (2) of subsection c.
20 of this section, there shall be a presumption that the juvenile shall
21 serve any custodial sentence imposed in a ²State² juvenile facility
22 ²operated by the Juvenile Justice Commission² until the juvenile
23 reaches the age of 21, except that:

24 (a) a juvenile who has not reached the age of 21 may ²[be
25 required to serve the sentence in a State correctional facility for
26 good cause shown] , in the discretion of the Juvenile Justice
27 Commission, be transferred to the Department of Corrections in
28 accordance with the plan established pursuant to subsection e. of
29 section 7 of P.L.1995, c.284 (C.52:17B-175) and regulations
30 adopted pursuant to that section²; and

31 (b) a juvenile who has reached or exceeds the age of 21 may
32 continue to serve a sentence in a ²State² juvenile facility ²[if it is
33 deemed to be in the best interests of that juvenile] operated by the
34 Juvenile Justice Commission in the discretion of the Juvenile
35 Justice Commission and if the juvenile so consents; otherwise the
36 juvenile shall serve the remainder of the custodial sentence in a
37 State correctional facility² ;

38 (2) If a juvenile is not convicted of an offense set forth in
39 paragraph (2) of subsection c. of this section, a conviction for any
40 other offense shall be ²deemed a juvenile adjudication and be²
41 remanded to the ²[juvenile court] Superior Court, Chancery
42 Division, Family Part² for disposition, in accordance with the
43 dispositional options available to that court ²and all records related
44 to the act of delinquency shall be subject to the provisions of
45 section 1 of P.L.1982, c.79 (C.2A:4A-60)²;

1 (3) ²**[If]** With the consent of the defense and the prosecutor,² at
2 any point in the proceedings subsequent to the decision ordering
3 waiver ²[information is obtained that has any bearing on the factors
4 considered in paragraph (3) of subsection c. of this section, the
5 juvenile may petition]² the court ²**[for]** may² remand to the
6 Superior Court, Chancery Division, Family Part if ²[the juvenile
7 can prove by clear and convincing evidence] it appears² that:

8 (a) the interests of the public and the best interests of the juvenile
9 require access to programs or procedures uniquely available to that
10 court; ²**[or]** and²

11 (b) the interests of the public are no longer served by waiver ²[to
12 the appropriate court]².¹

13 ²g. (1) The Juvenile Justice Commission, in consultation with
14 the Attorney General, shall establish a program to collect, record,
15 and analyze data regarding waiver of jurisdiction of a juvenile
16 delinquency case by the Superior Court, Chancery Division, Family
17 Part to an appropriate court and prosecuting authority. In
18 furtherance of this program, the Juvenile Justice Commission shall,
19 in cooperation with the Administrative Office of the Courts,
20 Attorney General, and county prosecutors, collect data related to the
21 decision to seek waiver of jurisdiction of a juvenile delinquency
22 case, which shall include but not be limited to data concerning:

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

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

28 (c) case processing times; and

29 (d) waiver rates by race and ethnicity.

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

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

39
40 ¹2. Section 17 of P.L.1982, c.77 (C.2A:4A-36) is amended to
41 read as follows:

42 a. If the court waives jurisdiction over a case and refers that
43 case to the appropriate court and prosecuting authority, there shall
44 be a hearing before the court waiving jurisdiction to decide whether
45 to **[remand]** detain the juvenile **[to a juvenile or adult detention**
46 facility. The decision] pending resolution of the case. If detention
47 is deemed necessary, there shall be a presumption that the juvenile

1 shall be detained in a ²county² juvenile detention facility, unless
 2 good cause is shown that it is necessary to detain the juvenile in a
 3 ²[State] county jail or other county² correctional facility ²in which
 4 adults are incarcerated² .

5 b. Upon conviction in the appropriate court and where
 6 detention pending sentencing is deemed necessary, there shall be a
 7 presumption that the juvenile shall be detained in a ²county²
 8 juvenile detention facility, unless good cause is shown that it is
 9 necessary to detain the juvenile in a ²[State] county jail or other
 10 county² correctional facility²in which adults are incarcerated² .

11 c. Good cause under this section shall be based on the best
 12 interests of the juvenile and protection of the public, and shall take
 13 into account ³such³ factors [as] ³[,] ³ including but not limited
 14 to, the juvenile's age and maturity, the nature and circumstances of
 15 the offense charged or for which the juvenile was convicted, the
 16 juvenile's prior offense history, the programs available at juvenile
 17 detention facilities, and any other relevant factors.

18 **[b. No] d.** A juvenile who has been waived to an appropriate
 19 adult court [may] shall not be remanded to [an adult detention]
 20 ³[a] a³ ²[State] county jail or other county² correctional facility
 21 ²in which adults are incarcerated² prior to the hearing provided for
 22 in subsection a. of this section.¹

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

24
 25 ¹3. Section 25 of P.L.1982, c.77 (C.2A:4A-44) is amended to
 26 read as follows:

27 25. Incarceration--Aggravating and mitigating factors.

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

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

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

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

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

45 (e) The fact that the juvenile committed the act pursuant to an
 46 agreement that the juvenile either pay or be paid for the commission

- 1 of the act and that the pecuniary incentive was beyond that inherent
2 in the act itself;
- 3 (f) The fact that the juvenile committed the act against a
4 policeman or other law enforcement officer, correctional employee
5 or fireman, acting in the performance of his duties while in uniform
6 or exhibiting evidence of his authority, or the juvenile committed
7 the act because of the status of the victim as a public servant;
- 8 (g) The need for deterring the juvenile and others from violating
9 the law;
- 10 (h) The fact that the juvenile knowingly conspired with others as
11 an organizer, supervisor, or manager to commit continuing criminal
12 activity in concert with two or more persons and the circumstances
13 of the crime show that he has knowingly devoted himself to
14 criminal activity as part of an ongoing business activity;
- 15 (i) The fact that the juvenile on two separate occasions was
16 adjudged a delinquent on the basis of acts which if committed by an
17 adult would constitute crimes;
- 18 (j) The impact of the offense on the victim or victims;
- 19 (k) The impact of the offense on the community; and
- 20 (l) The threat to the safety of the public or any individual posed
21 by the child.
- 22 (2) In determining whether incarceration is an appropriate
23 disposition the court shall consider the following mitigating
24 circumstances:
- 25 (a) The child is under the age of 14;
- 26 (b) The juvenile's conduct neither caused nor threatened serious
27 harm;
- 28 (c) The juvenile did not contemplate that the juvenile's conduct
29 would cause or threaten serious harm;
- 30 (d) The juvenile acted under a strong provocation;
- 31 (e) There were substantial grounds tending to excuse or justify
32 the juvenile's conduct, though failing to establish a defense;
- 33 (f) The victim of the juvenile's conduct induced or facilitated its
34 commission;
- 35 (g) The juvenile has compensated or will compensate the victim
36 for the damage or injury that the victim has sustained, or will
37 participate in a program of community service;
- 38 (h) The juvenile has no history of prior delinquency or criminal
39 activity or has led a law-abiding life for a substantial period of time
40 before the commission of the present act;
- 41 (i) The juvenile's conduct was the result of circumstances
42 unlikely to recur;
- 43 (j) The character and attitude of the juvenile indicate that the
44 juvenile is unlikely to commit another delinquent or criminal act;
- 45 (k) The juvenile is particularly likely to respond affirmatively to
46 noncustodial treatment;

1 (l) The separation of the juvenile from the juvenile's family by
 2 incarceration of the juvenile would entail excessive hardship to the
 3 juvenile or the juvenile's family;

4 (m) The willingness of the juvenile to cooperate with law
 5 enforcement authorities;

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

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

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

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

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

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

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

34 (a) Murder under 2C:11-3a(1) or (2) 20 years

35 (b) Murder under 2C:11-3a(3) 10 years

36 (c) Crime of the first degree, except murder 4 years

37 (d) Crime of the second degree 3 years

38 (e) Crime of the third degree 2 years

39 (f) Crime of the fourth degree 1 year

40 (g) Disorderly persons offense 6 months

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

1 pursuant to paragraph (3) or (4) of this subsection, or one-fourth of
2 any term imposed for any other crime the granting of parole shall be
3 subject to approval of the sentencing court. Prior to approving
4 parole, the court shall give the prosecuting attorney notice and an
5 opportunity to be heard. If the court denies the parole of a juvenile
6 pursuant to this paragraph it shall state its reasons in writing and
7 notify the parole board, the juvenile and the juvenile's attorney. The
8 court shall have 30 days from the date of notice of the pending
9 parole to exercise the power granted under this paragraph. If the
10 court does not respond within that time period, the parole will be
11 deemed approved.

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

26 (3) Upon application by the prosecutor, the court may sentence a
27 juvenile who has been convicted of a crime of the first, second, or
28 third degree if committed by an adult, to an extended term of
29 incarceration beyond the maximum set forth in paragraph (1) of this
30 subsection, if it finds that the juvenile was ¹previously¹ adjudged
31 delinquent on at least two separate occasions, for offenses which, if
32 committed by an adult, would constitute a crime of the first or
33 second degree **],** and was previously committed to an adult or
34 juvenile facility**].** The extended term shall not exceed five
35 additional years for an act which would constitute murder and shall
36 not exceed **[two] three** additional years for all other crimes of the
37 first degree **[or] and shall not exceed two additional years for a**
38 **crime of the** second degree, if committed by an adult, and one
39 additional year for a crime of the third degree, if committed by an
40 adult.

41 (4) Upon application by the prosecutor, when a juvenile is
42 before the court at one time for disposition of three or more
43 unrelated offenses which, if committed by an adult, would
44 constitute crimes of the first, second or third degree and which are
45 not part of the same transaction, the court may sentence the juvenile
46 to an extended term of incarceration not to exceed the maximum of

1 the permissible term for the most serious offense for which the
2 juvenile has been adjudicated plus two additional years.

3 (5) Every disposition that includes a term of incarceration shall
4 include a term of post-incarceration supervision equivalent to one-
5 third of the term of incarceration imposed. During the term of post-
6 incarceration supervision the juvenile shall remain in the
7 community and in the legal custody of the Juvenile Justice
8 Commission established pursuant to section 2 of P.L.1995, c.284
9 (C.52:17B-170) in accordance with the rules of the parole board,
10 unless the appropriate parole board panel determines that post-
11 incarceration supervision should be revoked and the juvenile
12 returned to custody in accordance with the procedures and standards
13 set forth in sections 15 through 21 of P.L.1979, c.441 (C.30:4-
14 123.59 through C.30:4-123.65). The term of post-incarceration
15 supervision shall commence upon release from incarceration or
16 parole, whichever is later. A term of post-incarceration supervision
17 imposed pursuant to this paragraph may be terminated by the
18 appropriate parole board panel if the juvenile has made a
19 satisfactory adjustment in the community while on parole or under
20 such supervision, if continued supervision is not required and if the
21 juvenile has made full payment of any fine or restitution.¹

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

23

24 ³[¹[3.] 4.¹ Section 26 of P.L.1982, c.77 (C.2A:4A-45) is
25 amended to read as follows:

26 26. Retention of jurisdiction.

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

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

41 c. The court may by its order retain jurisdiction in any other
42 case.

43 d. Notwithstanding the administrative grievance procedure set
44 forth in regulations promulgated by the Executive Director of the
45 Juvenile Justice Commission, the juvenile may petition the court for
46 modification of the disposition pursuant to this section or to compel
47 the Juvenile Justice Commission to comply with the terms and
48

1 conditions of that disposition.

2 (cf: P.L.1995, c.280,s.13)]³

3

4 ¹[4.] ³[5.1] 4.³ Section 7 of P.L.1995, c.284 (C.52:17B-175) is
5 amended to read as follows:

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

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

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

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

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

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

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

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

41 e. The commission and the Commissioner of [the Department
42 of] Corrections shall, consistent with applicable State and federal
43 standards, formulate a plan setting forth procedures for transferring
44 custody of any juvenile incarcerated in a juvenile facility who has
45 reached the age of [16] 18 during confinement and whose
46 continued presence in the juvenile facility threatens the public
47 safety, the safety of juvenile offenders, or the ability of the

1 commission to operate the program in the manner intended. The
 2 commission and the Commissioner of **【the Department of】**
 3 Corrections shall jointly adopt regulations pursuant to the
 4 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 5 seq.), establishing the procedures included in the plan. At a
 6 minimum, the plan shall require that:

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

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

11 (3) the juvenile be represented by ²**【counsel】** the Office of the
 12 Public Defender, unless the juvenile chooses to be represented by
 13 nonprofit counsel or engage private counsel at the juvenile's
 14 expense²;

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

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

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

20
 21 ¹**【5】** ³**【6¹】** 5.³ (New section) a. A juvenile detained in, or
 22 sentenced to, a State juvenile correctional facility or county juvenile
 23 detention center shall not be subject to ¹**【solitary confinement】**
 24 room restriction¹ unless the juvenile poses an immediate and
 25 substantial risk of harm to others or to the security of the facility,
 26 and all other less-restrictive options have been exhausted.

27 b. A juvenile may be subject to ¹**【solitary confinement】** room
 28 restriction¹ only for the minimum time required to address the
 29 safety risk and for a period that does not compromise the mental
 30 and physical health of the juvenile, but in no case shall a juvenile be
 31 held in ¹**【solitary confinement】** room restriction¹ for more than
 32 eight consecutive waking hours without being released for at least
 33 two hours for recreation and exercise.

34 c. A juvenile who is 15 years of age or younger shall not be
 35 ¹**【held in solitary confinement】** subject to room restriction¹ for
 36 more than two consecutive days. A juvenile who is 16 years of age
 37 or older but younger than 18 years of age shall not be ¹**【held in**
 38 **solitary confinement】** subject to room restriction¹ for more than
 39 three consecutive days. A juvenile who is 18 years of age or older
 40 shall not be ¹**【held in solitary confinement】** subject to room
 41 restriction¹ for more than five consecutive days. A juvenile shall
 42 not be ¹**【held in solitary confinement】** subject to room restriction¹
 43 for more than 10 total days in a calendar month.

44 d. Juveniles subject to ¹**【solitary confinement】** room
 45 restriction¹ shall continue to receive health, mental health, and
 46 educational services.

1 e. Each State correctional facility or county juvenile detention
 2 facility shall document, in aggregate, the use of ¹["solitary
 3 confinement"] room restriction¹, including the dates and duration of
 4 each occurrence, the reason for placement in ¹["solitary
 5 confinement"] room restriction¹, and the race, age, and gender of the
 6 juvenile placed in ¹["solitary confinement"] room restriction¹. If any
 7 health or mental health clinical evaluations were performed, it shall
 8 be affirmatively certified that the results of those evaluations were
 9 considered in any decision to place the juvenile in ¹["solitary
 10 confinement"] room restriction¹ or to continue ¹["solitary
 11 confinement"] room restriction¹.

12 The aggregate data compiled pursuant to this subsection shall be:

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

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

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

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

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

25 i. For the purposes of this section, ¹["solitary confinement"]
 26 "room restriction"¹ shall mean the placement of a juvenile in a State
 27 ¹juvenile¹ correctional facility or county juvenile detention center
 28 in a locked room or cell, alone or with one other person, for 22 to
 29 24 hours per day. ¹["Solitary confinement"] Room restriction¹ shall
 30 not include confinement of a juvenile in a single-person room or
 31 cell for brief periods of locked-room confinement necessary for
 32 institutional operations, including, but not limited to, shift changes,
 33 showering, and unit movements.

34

35 ³[¹7.] ^{6.}³ Section 7 of P.L.1982, c.77 (C.2A:4A-26) is
 36 repealed.¹

37

38 ¹[6.] ³[^{8.}¹] ^{7.}³ This act shall take effect on the first day of the
 39 seventh month following enactment.

40

41

42

43

44

Makes certain reforms to juvenile justice system.

SENATE, No. 2003

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED APRIL 28, 2014

Sponsored by:
Senator NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS

Makes certain reforms to juvenile justice system.

CURRENT VERSION OF TEXT

As introduced.



S2003 POU

2

1 AN ACT concerning juvenile justice and amending and
2 supplementing various parts of the statutory law.

3

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

6

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

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

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

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

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

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

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

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

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

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

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1 enumerated in subparagraph (a), (i) or (j) of paragraph (2) of
2 subsection a. of this section or with respect to a violation of
3 N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998, c.26
4 (C.2C:39-4.1).

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

9 (cf: P.L.2007, c.341, s.3)

10

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

17 a. Academic instruction and academic counseling, consistent
18 with State and federal law;

19 b. Vocational education and training;

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

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

25 e. Mental health treatment or counseling;

26 f. Medical and dental care and treatment;

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

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

34 i. Re-entry services to assist the juvenile in returning to the
35 community; and

36 j. Any other services or assistance reasonably related to the
37 rehabilitation of the juvenile.

38

39 3. Section 26 of P.L.1982, c.77 (C.2A:4A-45) is amended to
40 read as follows:

41 26. Retention of jurisdiction.

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

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

8 c. The court may by its order retain jurisdiction in any other
9 case.

10 d. Notwithstanding the administrative grievance procedure set
11 forth in regulations promulgated by the Executive Director of the
12 Juvenile Justice Commission, the juvenile may petition the court for
13 modification of the disposition pursuant to this section or to compel
14 the Juvenile Justice Commission to comply with the terms and
15 conditions of that disposition.

16 (cf: P.L.1995, c.280,s.13)

17

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

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

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

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

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

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

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

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

S2003 POU

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

7 e. The commission and the Commissioner of **【the Department**
8 **of】** Corrections shall, consistent with applicable State and federal
9 standards, formulate a plan setting forth procedures for transferring
10 custody of any juvenile incarcerated in a juvenile facility who has
11 reached the age of **【16】** 18 during confinement and whose
12 continued presence in the juvenile facility threatens the public
13 safety, the safety of juvenile offenders, or the ability of the
14 commission to operate the program in the manner intended. The
15 commission and the Commissioner of **【the Department of】**
16 Corrections shall jointly adopt regulations pursuant to the
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
18 seq.), establishing the procedures included in the plan. At a
19 minimum, the plan shall require that:

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

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

24 (3) the juvenile be represented by counsel;

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

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

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

30

31 5. (New section) a. A juvenile detained in, or sentenced to, a
32 State juvenile correctional facility or county juvenile detention
33 center shall not be subject to solitary confinement unless the
34 juvenile poses an immediate and substantial risk of harm to others
35 or to the security of the facility, and all other less-restrictive options
36 have been exhausted.

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

43 c. A juvenile who is 15 years of age or younger shall not be held
44 in solitary confinement for more than two consecutive days. A
45 juvenile who is 16 years of age or older but younger than 18 years
46 of age shall not be held in solitary confinement for more than three
47 consecutive days. A juvenile who is 18 years of age or older shall
48 not be held in solitary confinement for more than five consecutive

1 days. A juvenile shall not be held in solitary confinement for more
2 than 10 total days in a calendar month.

3 d. Juveniles subject to solitary confinement shall continue to
4 receive health, mental health, and educational services.

5 e. Each State correctional facility or county juvenile detention
6 facility shall document, in aggregate, the use of solitary
7 confinement, including the dates and duration of each occurrence,
8 the reason for placement in solitary confinement, and the race, age,
9 and gender of the juvenile placed in solitary confinement. If any
10 health or mental health clinical evaluations were performed, it shall
11 be affirmatively certified that the results of those evaluations were
12 considered in any decision to place the juvenile in solitary
13 confinement or to continue solitary confinement.

14 The aggregate data compiled pursuant to this subsection shall be:

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

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

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

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

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

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

35
36 6. This act shall take effect on the first day of the seventh
37 month following enactment.

38

39

40

STATEMENT

41

42 This bill makes various changes to this State's juvenile justice
43 system. Specifically, the bill revises the State's law governing
44 waiver; expands the jurisdiction of the family court over juveniles
45 placed in correctional facilities; requires due process before a
46 juvenile can be transferred to an adult correctional facility; and
47 imposes restrictions on the use of solitary confinement of juveniles.

S2003 POU

1 Under the current juvenile waiver law, the Family Part of the
2 Chancery Division of the Superior Court, upon motion of the
3 prosecutor, must waive jurisdiction over a juvenile's case and refer
4 that case to the appropriate adult court and prosecuting authority,
5 without the juvenile's consent, if the following conditions are met:

- 6 (1) the juvenile is 14 years of age or older; and
7 (2) there is probable cause that the juvenile committed a
8 delinquent act which, if committed by an adult, would constitute
9 one of the crimes enumerated in the juvenile waiver statute; and
10 (3) the State establishes that the nature of the charge against the
11 juvenile or the juvenile's prior record is sufficiently serious that
12 waiver is in the public interest.

13 In accordance with these conditions, the court has discretion in
14 determining whether the State has met its burden of proving that
15 waiver of the juvenile to adult criminal court is in the public
16 interest. Waiver will not be granted by the court if a juvenile can
17 show that the probability of rehabilitation through the use of court
18 services by the time he or she is 19 years old outweighs the reasons
19 for waiver.

20 Under the bill, the age requirement for a juvenile case to be
21 transferred from family court to adult criminal court is raised from
22 14 years of age or older to 16 years of age or older. This is based
23 on new research on adolescent brain development disproving the
24 presumption that juveniles who commit crimes think like adults and
25 cannot be rehabilitated.

26 The bill also raises the age by which the juvenile can be
27 rehabilitated from 19 to 26. Also under the bill, the burden of proof
28 would shift to the prosecution to prove, by clear and convincing
29 evidence, that the reasons for waiver outweigh the probability of
30 rehabilitation by age 26.

31 The bill increases the time allotted to file a waiver motion from
32 30 to 60 days after receiving the complaint to allow adequate time
33 for investigation.

34 Current law requires the Juvenile Justice Commission (JJC) and
35 the Department of Corrections to formulate a plan setting forth
36 procedures for transferring juveniles from a juvenile facility to an
37 adult correctional facility upon reaching the age of 18 if the juvenile
38 poses a threat to the public safety or the safety of other juvenile
39 offenders, or impedes JJC operations. This bill requires that plan to
40 include specific provisions to ensure that: (1) the juvenile is
41 notified, in writing, of the proposed transfer and the factual basis
42 supporting the transfer; (2) the juvenile is provided with the
43 opportunity to be heard and to present opposition; (3) the juvenile
44 be represented by counsel; (4) the decision to proceed with the
45 transfer is made by an impartial person; and (5) written findings of
46 the facts supporting the decision to proceed with the transfer
47 accompany the decision.

48 The bill also expands the jurisdiction of the family court over

1 juvenile cases. Under the bill, a court that imposes a term of
2 incarceration is required to consider the rehabilitative, treatment,
3 and educational needs of the juvenile. The bill gives the court
4 discretion to order the JJC to provide the juvenile services and
5 assistance, such as (1) academic instruction and academic
6 counseling, consistent with State and federal law; (2) vocational
7 education and training; (3) post-secondary educational
8 opportunities, including but not limited to enrollment assistance and
9 college-level instruction; (4) a suitable program for the treatment of
10 alcohol or narcotic abuse if the juvenile has been determined to be
11 in need of these services; (5) mental health treatment or counseling;
12 (6) medical and dental care and treatment; (7) regular contact
13 through telephone calls and in-person visits with the juvenile's
14 parents, guardians, and other family members, including
15 transportation assistance upon showing a demonstrated need for this
16 assistance; (8) work programs that are designed to provide job skills
17 and specific employment training to enhance the employment
18 readiness of the juvenile; (9) re-entry services to assist the juvenile
19 in returning to the community; and (10) any other services or
20 assistance reasonably related to the rehabilitation of the juvenile.
21 The bill also authorizes the juvenile to petition the court for
22 modification of the disposition or to compel the Juvenile Justice
23 Commission to comply with the terms and conditions of that
24 disposition.

25 Finally, the bill places restrictions on the use of solitary
26 confinement in State correctional facilities and juvenile detention
27 centers. The bill prohibits a juvenile from being held in solitary
28 confinement, unless the juvenile poses an immediate and substantial
29 risk of harm to others or to the security of the facility, and all other
30 less-restrictive options have been exhausted.

31 The bill specifically prohibits a juvenile from being held in
32 solitary confinement for more than eight consecutive waking hours
33 without being released for at least two hours for recreation and
34 exercise. Under the bill, 14 and 15 year old juveniles are prohibited
35 from being held in solitary confinement for more than two
36 consecutive days; 16 and 17 year olds are prohibited from being
37 held in solitary confinement for more than three consecutive days;
38 and juveniles 18 years of age or older are prohibited from being
39 held in solitary confinement for more than five consecutive days.
40 Juveniles, regardless of their age, may not be held in solitary
41 confinement under the bill for more than 10 total days in a calendar
42 month. Juveniles are to continue to receive health, mental health,
43 and educational services when being held in solitary confinement.

44 The bill requires that the use of solitary confinement be
45 documented by the facility or center. The information is to include
46 the dates and duration of each occurrence, the reason for the
47 placement, race, age, and gender of the juvenile, and if any health
48 or mental health clinical evaluations were performed, that the

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1 results were considered in the decision to place the juvenile in
2 confinement. The aggregate data is to be made available to the
3 public under the State's Open Public Records Act. The Juvenile
4 Justice Commission also is required to publish the aggregate data
5 on its website.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 2003

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 12, 2015

The Senate Law and Public Safety Committee reports without recommendation and with committee amendments Senate Bill No. 2003.

As amended and reported by the committee, Senate Bill No. 2003 makes various changes to this State's juvenile justice system. Specifically, the amended bill revamps the State's law governing waiver; expands family court jurisdiction under certain circumstances; requires due process before a juvenile can be transferred to an adult correctional facility; and restricts the use of room restriction to discipline incarcerated juveniles.

Under this State's current juvenile waiver statute, a juvenile's case may be transferred to adult criminal court under certain circumstances. Whether a juvenile's case is waived depends on the age of the juvenile, if probable cause is established that the juvenile committed the offense charged. In some instances, waiver depends upon whether it can be shown that the interests of the public require waiver and whether the juvenile can establish that the probability of rehabilitation through the use of court services by the time he or she is 19 years old outweighs the reasons for waiver.

Currently, a prosecutor has 30 days from the time of the complaint to file a waiver motion unless good cause is shown to extend this time period. If a prosecutor motions to waive the case of a juvenile who has reached the age of 16 or older and establishes the requisite probable cause that the juvenile committed a serious offense as enumerated in the statute, often referred to as a "chart 1" offense, the juvenile will automatically be waived to adult criminal court. This is referred to as "prosecutorial discretionary waiver." The chart 1 offenses include such offenses as criminal homicide (excluding death by auto), strict liability for drug-induced deaths, first degree robbery, aggravated sexual assault and sexual assault, possession of a firearm with the purpose to use it unlawfully against another person, leader of a narcotics trafficking network, maintaining and operating a controlled dangerous substance production facility, weapons possession while committing certain other controlled dangerous substance offenses, and first or second degree computer criminal activity.

Juveniles who are 14 or 15 years old and juveniles 16 years of age or older who are charged with less serious offenses, often referred to as “chart 2 offenses,” will be waived to adult criminal court if the State establishes that the nature of the charge against the juvenile or the juvenile’s prior record is sufficiently serious that waiver is in the public interest and if the juvenile fails to establish during an “amenability hearing” that the probability of rehabilitation outweighs the reasons for waiver. This is referred to as “judicial discretionary waiver.”

The amended bill repeals the current juvenile waiver statute and replaces it with a streamlined process for determining whether a juvenile case should be transferred to an adult criminal court. Under the amended bill, only juveniles who are 15 years of age and older and who are charged with certain chart 1 offenses would be eligible for waiver. The time allotted to the prosecutor to file a waiver motion is increased from 30 to 60 days after receiving the complaint.

After establishing probable cause that a juvenile 15 years of age or older committed one of the enumerated chart 1 offenses, the amended bill requires the prosecution to prove, by clear and convincing evidence, that the nature and circumstances of the charge or the juvenile's prior record are sufficiently serious that the interests of the public require waiver. In making the determination of whether the interests of the public require waiver, the court is required to consider: 1) the nature and circumstances of the offense charged; 2) whether the offense was against the person or property, allocating more weight for crimes against the person; 3) the degree of the juvenile’s culpability; 4) the age of the juvenile; 5) any diagnoses concerning mental capacity or cognitive development of the juvenile, or any classification that the juvenile is eligible for special education; 6) the maturity of the juvenile; 7) the degree of criminal sophistication exhibited by the juvenile; 8) the nature and extent of any prior history of delinquency of the juvenile; 9) any current or prior involvement of the juvenile with child welfare agencies; 10) any evidence of mental health concerns, substance abuse, or emotional instability of the juvenile; and 11) the moral development of the juvenile. The often lengthy and expensive amenability hearings held pursuant to the current juvenile waiver statute would be eliminated.

The amended bill’s provisions concerning juvenile waiver also provide for a juvenile whose case was waived to serve his or her sentence in a juvenile facility rather than an adult facility. Specifically, the juvenile’s case is to proceed in the adult criminal court as if the case originated there, including through sentencing, but there is a presumption in the amended bill that the juvenile will serve a custodial sentence in a juvenile facility until the juvenile reaches the age of 21. Under the bill, a juvenile under 21 years of age may be required to serve the sentence in a State correctional facility if good cause is shown. Also, a juvenile may continue to serve a sentence in a

juvenile facility after reaching the age of 21 if it is deemed to be in the juvenile's best interest.

Also under the amended bill, certain juvenile cases waived to an adult criminal court will be remanded to the juvenile court for sentencing, which is referred to as disposition under the juvenile code. Specifically, if a juvenile was not convicted of the offense on which the waiver was based, but was convicted of a lesser offense, the case will be remanded to the juvenile court and the juvenile court judge would impose a disposition, which may include incarceration. The juvenile therefore would be subject to the penalties under the juvenile code, rather than those under adult criminal code.

In addition to revamping the current juvenile waiver statute, the amended bill establishes a presumption that a juvenile whose case has been waived is to be detained in a juvenile facility pending resolution of the case and pending sentencing.

The amended bill also changes the current law governing extended sentences for juveniles. Currently, the juvenile code provides for a custodial sentence of one year for a crime which, if committed by an adult, constitutes a fourth degree crime; two years for a third degree crime; three years for a second degree crime; four years for a first degree crime other than murder; and either 10 or 20 years for murder depending on the circumstances. A prosecutor can apply for an extended term of incarceration if the juvenile was adjudicated delinquent on two separate occasions for a first or second degree crime and was previously incarcerated. Extended terms consist of five years for murder, two years for a crime of the first or second degree, and one year for a crime of the third degree. Under the amended bill, the extended sentence remains five years for murder, but increases the term from two to three years for all other first degree crimes. The amended bill also removes the requirement that the juvenile had to be previously incarcerated to be eligible for an extended sentence.

The amended bill further provides that if, at any point in the proceedings subsequent to the decision granting waiver, information is obtained that has any bearing on the factors considered by the court in determining whether the interest of the public required waiver, the juvenile is authorized to petition the court for remand to the juvenile court if the juvenile can prove by clear and convincing evidence that the interest of the public and the best interests of the juvenile requires access to programs or procedures uniquely available to that court, or if the interest of the public is no longer served by waiver to the adult criminal court.

The amended bill also makes changes to the current law governing the transfer of juveniles from a juvenile facility to a State correctional facility. Current law requires the Juvenile Justice Commission (JJC) and the Department of Corrections to formulate a plan setting forth procedures for transferring juveniles from a juvenile facility to an adult correctional facility upon reaching the age of 18 if the juvenile poses a

threat to the public safety or the safety of other juvenile offenders, or impedes JJC operations. The amended bill requires that plan to include specific provisions to ensure that: (1) the juvenile is notified, in writing, of the proposed transfer and the factual basis supporting the transfer; (2) the juvenile is provided with the opportunity to be heard and to present opposition; (3) the juvenile be represented by counsel; (4) the decision to proceed with the transfer is made by an impartial person; and (5) written findings of the facts supporting the decision to proceed with the transfer accompany the decision.

The amended bill also expands the jurisdiction of the family court over juvenile cases by authorizing the juvenile to petition the court for modification of the disposition or to compel the Juvenile Justice Commission to comply with the terms and conditions of that disposition.

Finally, the amended bill places restrictions on the use of solitary confinement, or what is referred to in current JJC regulations as “room restriction,” in State juvenile correctional facilities and juvenile detention centers. The amended bill prohibits a juvenile from being 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.

The bill specifically prohibits a juvenile from being subject to room restriction for more than eight consecutive waking hours without being released for at least two hours for recreation and exercise. Under the amended bill, 14 and 15 year old juveniles are prohibited from being subject to room restriction for more than two consecutive days; 16 and 17 year olds are prohibited from being subject to room restriction for more than three consecutive days; and juveniles 18 years of age or older are prohibited from being subject to room restriction for more than five consecutive days. Juveniles, regardless of their age, may not be subject to room restriction under the amended bill for more than 10 total days in a calendar month. Juveniles are to continue to receive health, mental health, and educational services when subject to room restriction.

The amended bill requires that the use of room restriction be documented by the facility or center. The information is to include the dates and duration of each occurrence, the reason for the placement, race, age, and gender of the juvenile, and if any health or mental health clinical evaluations were performed, that the results were considered in the decision to subject the juvenile to room restriction. The aggregate data is to be made available to the public under the State’s Open Public Records Act. The JJC also is required to publish the aggregate data on its website.

COMMITTEE AMENDMENTS:

The committee made the following amendments to the bill:

1) replace the current juvenile waiver statute to provide for a juvenile to be waived to adult criminal court if the following three conditions are met:

a) the juvenile is 15 years old; and

b) there is probable cause that the juvenile committed one of the serious offenses enumerated in the new section; those offenses closely mirror the current “chart 1” offenses for which 16 and 17 years olds are waived under prosecutorial discretion; and

c) the prosecution proves by clear and convincing evidence that the nature and circumstances of the charge or the juvenile’s record are sufficiently serious that the interests of the public require waiver; in making this determination the court is to consider various factors set forth in the new statute, such as the nature and circumstances of the charges, whether the offense was against a person or property, the age and maturity of the juvenile; prior delinquent history; and the juvenile’s mental health;

2) provide that a juvenile who is waived to adult court serves a custodial sentence imposed in a juvenile facility until the juvenile is 21; there’s an exception providing that a juvenile under 21 can be required to serve the sentence in an adult facility if good cause is shown; there’s also an exception that a juvenile 21 or older can continue serving the sentence in a juvenile facility if it is deemed to be in the best interests of the child;

3) provide that the case of a juvenile who is convicted of a non-waivable offense is remanded to family court for a disposition;

4) include a reverse waiver provision which allows for the juvenile’s case to be remanded to the family court based on information received after the waiver decision;

5) provide that juveniles whose cases are waived and are detained pending resolution of the case and while awaiting sentencing are to be detained in a juvenile facility;

6) increases extended terms that may be imposed under the juvenile code for first degree crimes and removes the requirement that a juvenile be previously committed to an adult or juvenile facility;

7) deletes all of section 2 of the bill which would have given the family court the ability to order the JJC to provide certain rehabilitative, treatment, and educational services to incarcerated juveniles;

8) change the references to “solitary confinement” in section 5 of the bill to “room restriction” as that is the term used in JJC regulations.

SENATE BUDGET AND APPROPRIATIONS
COMMITTEE

STATEMENT TO

[First Reprint]
SENATE, No. 2003

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 12, 2015

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2003, with committee amendments.

As amended, this bill makes various changes to this State's juvenile justice system. Specifically, the amended bill revamps the State's law governing waiver of juveniles to adult criminal court and increases certain extended sentences for juveniles; expands family court jurisdiction under certain circumstances; requires due process before a juvenile can be transferred to an adult correctional facility; and places limitations on the use of room restriction to discipline incarcerated juveniles.

Under this State's current juvenile waiver statute, a juvenile's case may be transferred to adult criminal court under certain circumstances. Whether a juvenile's case is waived depends on the age of the juvenile and whether probable cause is established that the juvenile committed the offense charged. In some instances, waiver depends upon whether it can be shown that the interests of the public require waiver and whether the juvenile can establish that the probability of rehabilitation through the use of court services by the time he or she is 19 years old outweighs the reasons for waiver.

Currently, a prosecutor has 30 days from the receipt of the complaint to file a waiver motion unless good cause is shown to extend this time period. If a prosecutor motions to waive the case of a juvenile who has reached the age of 16 or older and establishes the requisite probable cause that the juvenile committed a serious offense as enumerated in the statute, often referred to as a "chart 1" offense, the juvenile will automatically be waived to adult criminal court. This is referred to as "prosecutorial discretionary waiver." The chart 1 offenses include such offenses as criminal homicide (excluding death by auto), strict liability for drug-induced deaths, first degree robbery, aggravated sexual assault and sexual assault, possession of a firearm with the purpose to use it unlawfully against another person, leader of a narcotics trafficking network, maintaining and operating a controlled

dangerous substance production facility, weapons possession while committing certain other controlled dangerous substance offenses, and first or second degree computer criminal activity.

Juveniles who are 14 or 15 years old and juveniles 16 years of age or older who are charged with less serious offenses, often referred to as “chart 2 offenses,” will be waived to adult criminal court if the State establishes that the nature of the charge against the juvenile or the juvenile’s prior record is sufficiently serious that waiver is in the public interest and if the juvenile fails to establish during an “amenability hearing” that the probability of rehabilitation outweighs the reasons for waiver. This is referred to as “judicial discretionary waiver.”

The amended bill repeals the current juvenile waiver statute and replaces it with a streamlined process for determining whether a juvenile case should be transferred to an adult criminal court. Under the amended bill, only juveniles who are 15 years of age and older and who are charged with certain chart 1 offenses as enumerated in the bill would be eligible for waiver. The time allotted to the prosecutor to file a waiver motion is increased from 30 to 60 days after receiving the complaint.

Under the bill as amended by the committee, the waiver motion is to be accompanied by a written statement from the prosecutor clearly setting forth the facts used in assessing the waiver factors together with an explanation as to how evaluation of those facts support waiver for each particular juvenile. The court is to review during a hearing whether the prosecution considered the waiver factors. The court may deny the prosecutor’s waiver motion if it is clearly convinced that the prosecutor abused his discretion in considering those factors.

The amended also provides that a juvenile whose case was waived would serve his or her sentence in a juvenile facility rather than an adult facility. Specifically, the juvenile’s case is to proceed in the adult criminal court as if the case originated there, including through sentencing, but there is a presumption that the juvenile will serve a custodial sentence in a juvenile facility until the juvenile reaches the age of 21. Juveniles under 21 years of age may be required to serve the sentence in a State correctional facility if the Juvenile Justice Commission (JJC) finds the juvenile’s continued presence in the facility threatens the public safety, the safety of juvenile offenders, or the operations of the commission. Also, a juvenile may continue to serve a sentence in a juvenile facility after reaching the age of 21 in the discretion of the commission and if the juvenile consents.

Also under the amended bill, certain juvenile cases waived to an adult criminal court will be remanded to the juvenile court for sentencing, which is referred to as disposition under the juvenile code. Specifically, if a juvenile was not convicted of the offense on which the waiver was based, but was convicted of another offense, that offense is to be deemed a juvenile adjudication and will be remanded

to the juvenile court for a disposition, which may include incarceration. The juvenile therefore would be subject to the penalties under the juvenile code, rather than those under the adult criminal code.

In addition to revamping the current juvenile waiver statute, the amended bill establishes a presumption that a juvenile whose case has been waived is to be detained in a juvenile facility pending resolution of the case and pending sentencing.

The amended bill also changes the current law governing extended sentences for juveniles. Currently, the juvenile code provides for a custodial sentence of one year for a crime which, if committed by an adult, constitutes a fourth degree crime; two years for a third degree crime; three years for a second degree crime; four years for a first degree crime other than murder; and either 10 or 20 years for murder, depending on the circumstances. A prosecutor can apply for an extended term of incarceration if the juvenile was adjudicated delinquent on two separate occasions for a first or second degree crime and was previously incarcerated. Extended terms consist of five years for murder, two years for a crime of the first or second degree, and one year for a crime of the third degree. Under the amended bill, the extended sentence remains five years for murder, but increases from two to three years for all other first degree crimes. The amended bill also removes the requirement that the juvenile had to be previously incarcerated to be eligible for an extended sentence.

The amended bill further provides that if the prosecutor and defense consent, at any point in the proceedings subsequent to the decision granting waiver, the court may remand the case to juvenile court if it appears the interests of the public and the best interests of the juvenile requires access to programs or procedures uniquely available to that court and the interest of the public is no longer served by waiver to the adult criminal court.

The committee amended the bill to establish data collection and reporting requirements concerning juvenile waiver. Biennial reports are to be published on the commission's website and transmitted to the Governor and the Legislature.

The amended bill also makes changes to the current law governing the transfer of juveniles from a juvenile facility to a State correctional facility. The amended bill also expands the jurisdiction of the family court over juvenile cases by authorizing the juvenile to petition the court for modification of the disposition or to compel the JJC to comply with the terms and conditions of that disposition.

Finally, the amended bill places limitations on the use of solitary confinement, or what is referred to in current JJC regulations as "room restriction," in State juvenile correctional facilities and juvenile detention centers. The amended bill prohibits a juvenile from being 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.

The amended bill requires that the use of room restriction be documented by the facility or center and aggregate data is to be made available to the public under the State's Open Public Records Act. The JJC also is required to publish the aggregate data on its website.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1) expand the list of serious offenses for which a juvenile could be waived to adult court to include a crime committed at a time when the juvenile previously had been sentenced and confined in an adult correctional facility;

2) remove from the list of factors a county prosecutor is required to consider in deciding whether to file a motion to waive a juvenile case to adult court:

a) diagnoses concerning mental capacity or cognitive development; and

b) moral development of the juvenile;

3) add to the list of waiver factors:

a) whether the juvenile previously served a custodial sentence in a juvenile facility and the juvenile's response to programs provided there; and

b) input from any identifiable victim or the victim's family;

4) authorize the Attorney General to develop for dissemination to the county prosecutors guidelines or directives deemed necessary or appropriate to ensure the uniform application of the waiver factors throughout the State;

5) require county prosecutors to provide with the waiver motion a written statement of the reasons for the waiver including an assessment of the waiver factors;

6) require a waiver hearing during which the court is to receive evidence from the State and the juvenile concerning the age of the juvenile and whether there is probable cause that the juvenile committed the offense; the court also is required to review whether the prosecutor considered the waiver factors; a provision directing the court to permit cross-examination during the hearing was removed;

7) authorize the court to deny a prosecutor's waiver motion if the court is "clearly convinced that the prosecutor abused his discretion in considering" the waiver factors (previously, the prosecution had the burden of proving by clear and convincing evidence that the nature and circumstances of the charge or the juvenile's record are sufficiently serious that the interests of the public required waiver);

8) in regard to the presumption in the bill that a juvenile under 21 years old who is convicted of an offense for which the juvenile could be waived is to serve the custodial sentence in a juvenile facility, clarify that it is in the discretion of the JJC whether to transfer a

juvenile 18 years of age or older to an adult facility if the juvenile threatens the public safety or safety of other juveniles (the bill previously required good cause);

9) in the case of a juvenile 21 years old or more, provide that the juvenile may continue to serve the custodial sentence in a juvenile facility in the discretion of the JJC (the previous standard in the bill was if it was deemed to be in the best interests of the juvenile);

10) in the case of a juvenile convicted of a non-waivable offense that is remanded to family court for disposition, clarify that the offense is to be “deemed a juvenile adjudication” and be subject to confidentiality protections;

11) in regard to the bill’s reverse waiver provision, allow a juvenile’s case that was waived to adult court to be remanded to family court, the court may authorize reverse waiver if the defense and the prosecutor consent, if it appears that the interests of the public and the best interests of the juvenile require access to programs or procedures uniquely available to the court, and the interests of the public are no longer served by waiver;

12) require the JJC, in consultation with the Attorney General, to establish a program to collect, record, and analyze waiver data; the data is to include information on youth demographics, including age, gender, race, and ethnicity; case characteristics, including the degree of the offense waived, the degree of the offense convicted, and the final court resolution; case processing times; and waiver rates by race and ethnicity; the data is to be published on the Internet and reported to the Governor and Legislature every two years;

13) change the bill’s requirement that a juvenile being transferred from a juvenile facility to an adult facility be represented by counsel to a requirement that 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; and

14) make other clarifying and technical amendments.

FISCAL IMPACT:

The bill requires certain data collection and reporting requirements by the Juvenile Justice Commission, in cooperation with the Administrative Office of the Courts, the Attorney General, and the county prosecutors concerning waiver and room restriction. Reports are required to be published on the Internet as well as provided to the Governor and Legislature. The reporting requirements may require additional manpower for collection, analysis, and creation of reports.

The bill adds to the list of serious offenses for which a juvenile may be waived to adult court and to an adult correctional facility; however, language was added that provides a presumption juveniles will serve custodial sentences in juvenile facilities which may lead to fewer juveniles being sentenced to adult correctional facilities.

According to data provided in the Governor's proposed budget, as of 2015 adult correctional facilities such as Garden State Youth (\$82.73 per day), Albert C. Wagner Youth (\$140.10 per day), and Mountainview Youth (\$115.97 per day) currently have a lower operating budget than the Juvenile Justice Commission institutions (\$611.61 per day). The daily cost per inmate will fluctuate depending on how many juveniles are sentenced to each of the respective facilities.

The bill revises the requirement that a juvenile being transferred from a juvenile facility to an adult facility be represented by the Office of the Public Defender, unless the juvenile chooses to engage private counsel at the juvenile's expense. It is unknown how many juveniles will utilize the public defender versus engaging in private counsel.

The bill revises room restriction guidelines for juveniles of certain ages which may create a minimal expense if there is a need to relocate juveniles to alternate facilities to remedy issues such as inmate to inmate conflicts.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2003

STATE OF NEW JERSEY 216th LEGISLATURE

DATED: MAY 20, 2015

SUMMARY

Synopsis: Makes certain reforms to juvenile justice system.

Type of Impact: Indeterminate Increase.

Agencies Affected: Department of Law and Public Safety; Juvenile Justice Commission; Department of Corrections; Administrative Office of the Courts; Office of the Attorney General; Office of the Public Defender; County Juvenile Detention Facilities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State and County Cost	Indeterminate Increase- See comments below		

- The Office of Legislative Services finds the cost of this bill to be indeterminate.
- Requires certain data collection and reporting requirements by the Juvenile Justice Commission and county facilities.
- Establishes a presumption that certain juveniles will serve custodial sentences in juvenile facilities.
- Requires that a juvenile being transferred from a juvenile facility to an adult facility 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.
- Revises room restriction guidelines for juveniles of certain ages.

BILL DESCRIPTION

Senate Bill No. 2003 (2R) of 2014 makes various changes to this State's juvenile justice system.

Specifically, the bill revamps the State's law governing waiver of juveniles to adult criminal court and increases certain extended sentences for juveniles; expands family court jurisdiction under certain circumstances; requires due process before a juvenile can be transferred to an adult correctional facility; and places restrictions on the use of room restriction to discipline incarcerated juveniles.

Under this State's current juvenile waiver statute, a juvenile's case may be transferred to adult criminal court under certain circumstances. Whether a juvenile's case is waived depends on the age of the juvenile and whether probable cause is established that the juvenile committed the offense charged. In some instances, waiver depends upon whether it can be shown that the interests of the public require a waiver and whether the juvenile can establish that the probability of rehabilitation through the use of court services by the time he or she is 19 years old outweighs the reasons for waiver.

This bill provides a new streamlined process for determining whether a juvenile case should be transferred to an adult criminal court and increases the time allotted to the prosecutor to file a waiver motion from 30 to 60 days after receiving the complaint.

Under the bill, the waiver motion is to be accompanied by a written statement from the prosecutor clearly setting forth the facts used in assessing certain factors together with an explanation as to how evaluation of those facts support waiver for each particular juvenile.

Also under the bill, during a waiver hearing the prosecution is required to provide proof to the court that the juvenile is at least 15 years old and that there is probable cause that the juvenile committed the delinquent act. The court is to review during the hearing whether the prosecution considered the waiver factors. The court may deny the prosecutor's waiver motion if it is clearly convinced that the prosecutor abused his discretion in considering those factors.

The bill's provisions concerning juvenile waiver also provide for a juvenile whose case was waived to serve his or her sentence in a juvenile facility rather than an adult facility. Specifically, the juvenile's case is to proceed in the adult criminal court as if the case originated there, including through sentencing, but there is a presumption that the juvenile will serve a custodial sentence in a juvenile facility until the juvenile reaches the age of 21. Under the bill, a juvenile under 21 years of age may be required to serve the sentence in a State correctional facility if the Juvenile Justice Commission (JJC) finds the juvenile's continued presence in the facility threatens the public safety, the safety of juvenile offenders, or the commission's operations. Also, a juvenile may continue to serve a sentence in a juvenile facility after reaching the age of 21 in the discretion of the commission and if the juvenile consents.

Also under the bill, certain juvenile cases waived to an adult criminal court will be remanded to the juvenile court for sentencing, which is referred to as disposition under the juvenile code. Specifically, if a juvenile was not convicted of the offense on which the waiver was based, but was convicted of another offense, that offense is to be deemed a juvenile adjudication and will be remanded to the juvenile court; the juvenile court judge would impose a disposition, which may include incarceration. The juvenile therefore would be subject to the penalties under the juvenile code, rather than those under the adult criminal code.

In addition to revamping the current juvenile waiver statute, the bill establishes a presumption that a juvenile whose case has been waived is to be detained in a juvenile facility pending resolution of the case and pending sentencing.

The bill also changes the current law governing extended sentences for juveniles. Under the bill, the extended sentence remains five years for murder, but the term is increased from two to

three years for all other first degree crimes. The bill also removes the requirement that the juvenile had to be previously incarcerated to be eligible for an extended sentence.

The bill further provides that if the prosecutor and defense consent, at any point in the proceedings subsequent to the decision granting waiver, the court may remand the case to juvenile court if it appears that the interests of the public and the best interests of the juvenile require access to programs or procedures uniquely available to that court and the interests of the public are no longer served by waiver.

The bill establishes data collections and reporting requirements concerning juvenile waiver. Under the bill, the JJC, in cooperation with the Administrative Office of the Courts, the Attorney General, and the county prosecutors, is required to collect waiver data, concerning youth demographics, including age, gender, race, and ethnicity; case characteristics, including the degree of the offense waived, the degree of the offense convicted, and the final court resolution; case processing times; and waiver rates by race and ethnicity. Biennial reports are to be published on the commission's website and transmitted to the Governor and the Legislature.

The bill also makes changes to the current law governing the transfer of juveniles from a juvenile facility to a State correctional facility. Current law requires the JJC and the Department of Corrections to formulate a plan setting forth procedures for transferring juveniles from a juvenile facility to an adult correctional facility upon reaching the age of 16 if the juvenile poses a threat to the public safety or the safety of other juvenile offenders, or impedes JJC operations. The bill provides that a juvenile may be transferred upon the age of 18 and requires the plan to include specific provisions to ensure that: (1) the juvenile is notified, in writing, of the proposed transfer and the factual basis supporting the transfer; (2) the juvenile is provided with the opportunity to be heard and to present opposition; (3) the juvenile may 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 is made by an impartial person; and (5) written findings of the facts supporting the decision to proceed with the transfer accompany the decision.

The bill also expands the jurisdiction of the family court over juvenile cases by authorizing the juvenile to petition the court for modification of the disposition or to compel the JJC to comply with the terms and conditions of that disposition.

Finally, the bill places restrictions on the use of solitary confinement, or what is referred to in current JJC regulations as "room restriction," in State juvenile correctional facilities and juvenile detention centers. The bill prohibits a juvenile from being 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. The bill also revises the amount of time juveniles of certain ages may be subject to room restriction.

The bill requires that the use of room restriction be documented by the facility or center. The information is to include the dates and duration of each occurrence, the reason for the placement, and the race, age, and gender of the juvenile. If any health or mental health clinical evaluations were performed, it is to be certified that the results were considered in the decision to subject the juvenile to room restriction. The aggregate data is to be made available to the public under the State's open public records act. The JJC also is required to publish the aggregate data on its website.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services finds the fiscal impact of this bill to be indeterminate based on several unknown factors.

The bill requires certain data collection and reporting requirements by the JJC and county facilities. Additional staff may be needed to collect, analyze, and generate these reports. Additionally, the bill requires specific data to be collected and it is unknown what, if any, technology the JJC and county facilities may require to meet this requirement.

The bill establishes a presumption that juveniles will serve custodial sentences in juvenile facilities. This presumption may lead to fewer juveniles being sentenced to adult correctional facilities. According to data provided in the Governor's proposed budget, as of 2015, Department of Corrections facilities such as Garden State Youth Correctional Facility (\$82.73 per day), Albert C. Wagner Youth Correctional Facility (\$140.10 per day), and Mountainview Youth Correctional Facility (\$115.97 per day) currently have a lower operating budget than the Juvenile Justice Commission institutions (\$611.61 per day). The daily cost per inmate will fluctuate depending on how many juveniles are sentenced to each of the respective facilities. Additionally, data collected in 2009 indicated that 155 juveniles were waived to criminal court. Incarcerating additional juveniles in the JJC may result increased costs to the State.

The bill requires that a juvenile being transferred from a juvenile facility to an adult facility be represented by the Office of the Public Defender or a non-profit entity, unless the juvenile chooses to engage private counsel at the juvenile's expense. It is unknown how many juveniles will be represented by a public defender versus nonprofit or private counsel.

Lastly, the bill revises the use of room restriction for juveniles of certain ages which may create a minimal expense if there is a need to relocate juveniles to alternate facilities to remedy issues such as inmate to inmate conflicts.

Section: Law and Public Safety
Analyst: Kristin Santos
Senior Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

[Second Reprint]
SENATE, No. 2003

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 1, 2015

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 2003 (2R).

As amended and reported by the committee, Senate Bill No. 2003 (2R) makes various changes to this State's juvenile justice system. Specifically, the amended bill revamps the State's law governing waiver of juveniles to adult criminal court and increases certain extended sentences for juveniles; requires due process before a juvenile can be transferred to an adult correctional facility; and places limitations on the use of room restriction to discipline incarcerated juveniles.

Under this State's current juvenile waiver statute, a juvenile's case may be transferred to adult criminal court under certain circumstances. Whether a juvenile's case is waived depends on the age of the juvenile and whether probable cause is established that the juvenile committed the offense charged. In some instances, waiver depends upon whether it can be shown that the interests of the public require waiver and whether the juvenile can establish that the probability of rehabilitation through the use of court services by the time he or she is 19 years old outweighs the reasons for waiver.

Currently, a prosecutor has 30 days from the receipt of the complaint to file a waiver motion unless good cause is shown to extend this time period. If a prosecutor motions to waive the case of a juvenile who has reached the age of 16 or older and establishes the requisite probable cause that the juvenile committed a serious offense as enumerated in the statute, often referred to as a "chart 1" offense, the juvenile will automatically be waived to adult criminal court. This is referred to as "prosecutorial discretionary waiver." The chart 1 offenses include such offenses as criminal homicide (excluding death by auto), strict liability for drug-induced deaths, first degree robbery, aggravated sexual assault and sexual assault, possession of a firearm with the purpose to use it unlawfully against another person, leader of a narcotics trafficking network, maintaining and operating a controlled dangerous substance production facility, weapons possession while

committing certain other controlled dangerous substance offenses, and first or second degree computer criminal activity.

Juveniles who are 14 or 15 years old and juveniles 16 years of age or older who are charged with less serious offenses, often referred to as “chart 2 offenses,” will be waived to adult criminal court if the State establishes that the nature of the charge against the juvenile or the juvenile’s prior record is sufficiently serious that waiver is in the public interest and if the juvenile fails to establish during an “amenability hearing” that the probability of rehabilitation outweighs the reasons for waiver. This is referred to as “judicial discretionary waiver.”

The amended bill repeals the current juvenile waiver statute and replaces it with a streamlined process for determining whether a juvenile case should be transferred to an adult criminal court. Under the amended bill, only juveniles who are 15 years of age and older and who are charged with certain chart 1 offenses as enumerated in the bill would be eligible for waiver. The time allotted to the prosecutor to file a waiver motion is increased from 30 to 60 days after receiving the complaint.

Under the amended bill, the waiver motion is to be accompanied by a written statement from the prosecutor clearly setting forth the facts used in assessing the waiver factors together with an explanation as to how evaluation of those facts support waiver for each particular juvenile. The court is to review during a hearing whether the prosecution considered the waiver factors. The court may deny the prosecutor’s waiver motion if it is clearly convinced that the prosecutor abused his discretion in considering those factors.

The amended bill also provides that a juvenile whose case was waived would serve his or her sentence in a juvenile facility rather than an adult facility. Specifically, the juvenile’s case is to proceed in the adult criminal court as if the case originated there, including through sentencing, but there is a presumption that the juvenile will serve a custodial sentence in a juvenile facility until the juvenile reaches the age of 21. Juveniles under 21 years of age may be required to serve the sentence in a State correctional facility if the Juvenile Justice Commission (JJC) finds the juvenile’s continued presence in the facility threatens the public safety, the safety of juvenile offenders, or the operations of the commission. Also, a juvenile may continue to serve a sentence in a juvenile facility after reaching the age of 21 in the discretion of the commission and if the juvenile consents.

Also under the amended bill, certain juvenile cases waived to an adult criminal court will be remanded to the juvenile court for sentencing, which is referred to as disposition under the juvenile code. Specifically, if a juvenile was not convicted of the offense on which the waiver was based, but was convicted of another offense, that offense is to be deemed a juvenile adjudication and will be remanded

to the juvenile court for a disposition, which may include incarceration. The juvenile therefore would be subject to the penalties under the juvenile code, rather than those under the adult criminal code.

In addition to revamping the current juvenile waiver statute, the amended bill establishes a presumption that a juvenile whose case has been waived is to be detained in a juvenile facility pending resolution of the case and pending sentencing.

The amended bill also changes the current law governing extended sentences for juveniles. Currently, the juvenile code provides for a custodial sentence of one year for a crime which, if committed by an adult, constitutes a fourth degree crime; two years for a third degree crime; three years for a second degree crime; four years for a first degree crime other than murder; and either 10 or 20 years for murder, depending on the circumstances. A prosecutor can apply for an extended term of incarceration if the juvenile was adjudicated delinquent on two separate occasions for a first or second degree crime and was previously incarcerated. Extended terms consist of five years for murder, two years for a crime of the first or second degree, and one year for a crime of the third degree. Under the amended bill, the extended sentence remains five years for murder, but increases from two to three years for all other first degree crimes. The amended bill also removes the requirement that the juvenile had to be previously incarcerated to be eligible for an extended sentence.

The amended bill further provides that if the prosecutor and defense consent, at any point in the proceedings subsequent to the decision granting waiver, the court may remand the case to juvenile court if it appears the interests of the public and the best interests of the juvenile requires access to programs or procedures uniquely available to that court and the interests of the public are no longer served by waiver to the adult criminal court.

The amended bill establishes data collection and reporting requirements concerning juvenile waiver. Biennial reports are to be published on the commission's website and transmitted to the Governor and the Legislature. The amended bill also makes changes to the current law governing the transfer of juveniles from a juvenile facility to a State correctional facility.

Finally, the amended bill places limitations on the use of solitary confinement, or what is referred to in current JJC regulations as "room restriction," in State juvenile correctional facilities and juvenile detention centers. The amended bill prohibits a juvenile from being 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.

The amended bill requires that the use of room restriction be documented by the facility or center and aggregate data is to be made

available to the public under the State's Open Public Records Act. The JJC also is required to publish the aggregate data on its website.

As reported by the committee, this bill is identical to the Assembly Committee Substitute for Assembly Bill No. 4299, which also was reported on this same date.

COMMITTEE AMENDMENTS:

The committee amendments:

- 1) remove a provision that would authorize a juvenile to petition the family court for modification of a disposition or to compel the JJC to comply with the terms and conditions of a disposition; and
- 2) make technical corrections.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Third Reprint]

SENATE, No. 2003

STATE OF NEW JERSEY

DATED: JUNE 15, 2015

The Assembly Appropriations Committee reports favorably Senate Bill No. 2003 (3R).

This bill makes various changes to this State's juvenile justice system. The bill revamps the State's law governing waiver of juveniles to adult criminal court and increases certain extended sentences for juveniles; requires due process before a juvenile can be transferred to an adult correctional facility; and places limitations on the use of room restriction to discipline incarcerated juveniles.

Under this State's current juvenile waiver statute, a juvenile's case may be transferred to adult criminal court under certain circumstances. Whether a juvenile's case is waived depends on the age of the juvenile and whether probable cause is established that the juvenile committed the offense charged. In some instances, waiver depends upon whether it can be shown that the interests of the public require waiver and whether the juvenile can establish that the probability of rehabilitation through the use of court services by the time the juvenile is 19 years old outweighs the reasons for waiver.

Currently, a prosecutor has 30 days from the receipt of the complaint to file a waiver motion unless good cause is shown to extend this time period. If a prosecutor motions to waive the case of a juvenile who has reached the age of 16 or older and establishes the requisite probable cause that the juvenile committed a serious offense as enumerated in the statute, often referred to as a "chart 1 offense," the juvenile will automatically be waived to adult criminal court. This is referred to as "prosecutorial discretionary waiver." The chart 1 offenses include such offenses as criminal homicide (excluding death by auto), strict liability for drug-induced deaths, first degree robbery, aggravated sexual assault and sexual assault, possession of a firearm with the purpose to use it unlawfully against another person, leader of a narcotics trafficking network, maintaining and operating a controlled dangerous substance production facility, weapons possession while committing certain other controlled dangerous substance offenses, and first or second degree computer criminal activity.

Juveniles who are 14 or 15 years old and juveniles 16 years of age or older who are charged with less serious offenses, often referred to

as “chart 2 offenses,” will be waived to adult criminal court if the State establishes that the nature of the charge against the juvenile or the juvenile’s prior record is sufficiently serious that waiver is in the public interest and if the juvenile fails to establish during an “amenability hearing” that the probability of rehabilitation outweighs the reasons for waiver. This is referred to as “judicial discretionary waiver.”

The bill repeals the current juvenile waiver statute and replaces it with a streamlined process for determining whether a juvenile case should be transferred to an adult criminal court. Under the bill, only juveniles who are 15 years of age and older and who are charged with certain chart 1 offenses as enumerated in the bill would be eligible for waiver. The bill increases the time allotted to the prosecutor to file a waiver motion from 30 to 60 days after receiving the complaint.

The bill requires the waiver motion to be accompanied by a written statement from the prosecutor clearly setting forth the facts used in assessing the waiver factors together with an explanation as to how evaluation of those facts support waiver for each particular juvenile. The bill directs the court to review during a hearing whether the prosecution considered the waiver factors. The court may deny the prosecutor’s waiver motion if the court is clearly convinced that the prosecutor abused the prosecutor’s discretion in considering those factors.

The bill also provides that a juvenile whose case was waived would serve the juvenile’s sentence in a juvenile facility rather than an adult facility. The bill directs that the juvenile’s case is to proceed in the adult criminal court as if the case originated there, including through sentencing, but there is a presumption that the juvenile will serve a custodial sentence in a juvenile facility until the juvenile reaches the age of 21. Juveniles under 21 years of age may be required to serve the sentence in a State correctional facility if the Juvenile Justice Commission finds the juvenile’s continued presence in the facility threatens the public safety, the safety of juvenile offenders, or the operations of the commission. Also, a juvenile may continue to serve a sentence in a juvenile facility after reaching the age of 21 in the discretion of the commission and if the juvenile consents.

Also under the bill, certain juvenile cases waived to an adult criminal court will be remanded to the juvenile court for sentencing, which is referred to as “disposition under the juvenile code.” Specifically, if a juvenile was not convicted of the offense on which the waiver was based, but was convicted of another offense, the bill directs that offense be deemed a juvenile adjudication and be remanded to the juvenile court for a disposition, which may include incarceration. The juvenile therefore would be subject to the penalties under the juvenile code, rather than those under the adult criminal code.

In addition to revamping the current juvenile waiver statute, the bill establishes a presumption that a juvenile whose case has been waived is to be detained in a juvenile facility pending resolution of the case and pending sentencing.

The bill changes the current law governing extended sentences for juveniles. Currently, the juvenile code provides for a custodial sentence of one year for a crime which, if committed by an adult, constitutes a fourth degree crime; two years for a third degree crime; three years for a second degree crime; four years for a first degree crime other than murder; and either 10 or 20 years for murder, depending on the circumstances. A prosecutor can apply for an extended term of incarceration if the juvenile was adjudicated delinquent on two separate occasions for a first or second degree crime and was previously incarcerated. Extended terms consist of five years for murder, two years for a crime of the first or second degree, and one year for a crime of the third degree. Under the bill, the extended sentence remains five years for murder, but increases from two to three years for all other first degree crimes. The bill removes the requirement that the juvenile had to be previously incarcerated to be eligible for an extended sentence.

The bill provides that if the prosecutor and defense consent, at any point in the proceedings subsequent to the decision granting waiver, the court may remand the case to juvenile court if it appears the interests of the public and the best interests of the juvenile require access to programs or procedures uniquely available to that court and the interests of the public are no longer served by waiver to the adult criminal court.

The bill establishes data collection and reporting requirements concerning juvenile waiver; biennial reports are to be published on the commission's website and transmitted to the Governor and the Legislature.

The bill makes changes to the current law governing the transfer of juveniles from a juvenile facility to a State correctional facility.

The bill places limitations on the use of solitary confinement, or what is referred to in current Juvenile Justice Commission (JJC) regulations as "room restriction," in State juvenile correctional facilities and juvenile detention centers. The bill prohibits a juvenile from being 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.

The bill requires that the use of room restriction be documented by the facility or center and aggregate data is to be made available to the public under the State's Open Public Records Act. The bill requires the JJC to publish the aggregate data on its website.

As reported by the committee, this bill is identical to Assembly Bill No. 4299 (ACS), as also reported by the committee.

FISCAL IMPACT:

The bill requires certain data collection and reporting requirements by the Juvenile Justice Commission, in cooperation with the Administrative Office of the Courts, the Attorney General, and the county prosecutors concerning waiver and room restriction. The bill requires that reports be published on the Internet as well as provided to the Governor and Legislature. The reporting requirements may require additional manpower for collection, analysis, and creation of reports.

The bill adds to the list of serious offenses for which a juvenile may be waived to adult court and to an adult correctional facility; however, the bill provides a presumption juveniles will serve custodial sentences in juvenile facilities which may lead to fewer juveniles being sentenced to adult correctional facilities. According to data provided in the Governor's proposed budget, as of 2015 adult correctional facilities such as Garden State Youth (\$82.73 per day), Albert C. Wagner Youth (\$140.10 per day), and Mountainview Youth (\$115.97 per day) currently have a lower operating budget than the Juvenile Justice Commission institutions (\$611.61 per day). The daily cost per inmate will fluctuate depending on how many juveniles are sentenced to each of the respective facilities.

The bill revises the requirement that a juvenile being transferred from a juvenile facility to an adult facility be represented by the Office of the Public Defender, unless the juvenile chooses to engage private counsel at the juvenile's expense. It is unknown how many juveniles will utilize the public defender versus engaging in private counsel.

The bill revises room restriction guidelines for juveniles of certain ages which may create a minimal expense if there is a need to relocate juveniles to alternate facilities to remedy issues such as inmate-to-inmate conflicts.

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

SENATE, No. 2003 STATE OF NEW JERSEY 216th LEGISLATURE

DATED: JUNE 17, 2015

SUMMARY

- Synopsis:** Makes certain reforms to juvenile justice system.
- Type of Impact:** Indeterminate Increase.
- Agencies Affected:** Department of Law and Public Safety; Juvenile Justice Commission; Department of Corrections; Administrative Office of the Courts; Office of the Attorney General; Office of the Public Defender; County Juvenile Detention Facilities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State and County Cost	Indeterminate Increase - See comments below		

- The Office of Legislative Services finds the increased cost from enactment of this bill to be indeterminate.
- Requires certain data collection and reporting requirements by the Juvenile Justice Commission and county facilities.
- Establishes a presumption that certain juveniles will serve custodial sentences in juvenile facilities.
- Requires that a juvenile being transferred from a juvenile facility to an adult facility 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.
- Revises room restriction guidelines for juveniles of certain ages.

BILL DESCRIPTION

Senate Bill No. 2003 (3R) of 2014 makes various changes to this State's juvenile justice system.

Specifically, the bill revamps the State's law governing waiver of juveniles to adult criminal court and increases certain extended sentences for juveniles; requires due process before a juvenile can be transferred to an adult correctional facility; and places limitations on the use of room restriction to discipline incarcerated juveniles.

Under this State's current juvenile waiver statute, a juvenile's case may be transferred to adult criminal court under certain circumstances. Whether a juvenile's case is waived depends on the age of the juvenile and whether probable cause is established that the juvenile committed the offense charged. In some instances, waiver depends upon whether it can be shown that the interests of the public require waiver and whether the juvenile can establish that the probability of rehabilitation through the use of court services by the time he or she is 19 years old outweighs the reasons for waiver.

Currently, a prosecutor has 30 days from the receipt of the complaint to file a waiver motion unless good cause is shown to extend this time period. If a prosecutor motions to waive the case of a juvenile who is age 16 or older and establishes the requisite probable cause that the juvenile committed a serious offense as enumerated in the statute, often referred to as a "chart 1" offense, the juvenile will automatically be waived to adult criminal court. This is referred to as "prosecutorial discretionary waiver." The chart 1 offenses include criminal homicide (excluding death by auto), strict liability for drug-induced deaths, first degree robbery, aggravated sexual assault and sexual assault, possession of a firearm with the purpose to use it unlawfully against another person, leader of a narcotics trafficking network, maintaining and operating a controlled dangerous substance production facility, weapons possession while committing certain other controlled dangerous substance offenses, and first or second degree computer criminal activity.

Juveniles who are 14 or 15 years old and juveniles 16 years of age or older who are charged with less serious offenses, often referred to as "chart 2 offenses," will be waived to adult criminal court if the State establishes that the nature of the charge against the juvenile or the juvenile's prior record is sufficiently serious that waiver is in the public interest and if the juvenile fails to establish during an "amenability hearing" that the probability of rehabilitation outweighs the reasons for waiver. This is referred to as "judicial discretionary waiver."

The bill repeals the current juvenile waiver statute and replaces it with a streamlined process for determining whether a juvenile case should be transferred to an adult criminal court. Under the bill, only juveniles who are 15 years of age and older and who are charged with certain chart 1 offenses as enumerated in the bill would be eligible for waiver. The time allotted to the prosecutor to file a waiver motion is increased from 30 to 60 days after receiving the complaint.

Under the bill, the waiver motion is to be accompanied by a written statement from the prosecutor clearly setting forth the facts used in assessing the waiver factors together with an explanation as to how evaluation of those facts support waiver for each particular juvenile. The court is to review during a hearing whether the prosecution considered the waiver factors. The court may deny the prosecutor's waiver motion if it is clearly convinced that the prosecutor abused his discretion in considering those factors.

The bill also provides that a juvenile whose case was waived would serve his or her sentence in a juvenile facility rather than an adult facility. Specifically, the juvenile's case is to proceed in the adult criminal court as if the case originated there, including through sentencing, but there is a presumption that the juvenile will serve a custodial sentence in a juvenile facility until the juvenile reaches the age of 21. Juveniles under 21 years of age may be required to serve the sentence in a State correctional facility if the Juvenile Justice Commission (JJC) finds the

juvenile's continued presence in the facility threatens the public safety, the safety of juvenile offenders, or the operations of the commission. Also, a juvenile may continue to serve a sentence in a juvenile facility after reaching the age of 21 in the discretion of the commission and if the juvenile consents.

Also under the bill, certain juvenile cases waived to an adult criminal court will be remanded to the juvenile court for sentencing, which is referred to as disposition under the juvenile code. Specifically, if a juvenile was not convicted of the offense on which the waiver was based, but was convicted of another offense, that offense is to be deemed a juvenile adjudication and will be remanded to the juvenile court for a disposition, which may include incarceration. The juvenile therefore would be subject to the penalties under the juvenile code, rather than those under the adult criminal code.

In addition to revamping the current juvenile waiver statute, the bill establishes a presumption that a juvenile whose case has been waived is to be detained in a juvenile facility pending resolution of the case and pending sentencing.

The bill also changes the current law governing extended sentences for juveniles. Currently, the juvenile code provides for a custodial sentence of one year for a crime which, if committed by an adult, constitutes a fourth degree crime; two years for a third degree crime; three years for a second degree crime; four years for a first degree crime other than murder; and either 10 or 20 years for murder, depending on the circumstances. A prosecutor can apply for an extended term of incarceration if the juvenile was adjudicated delinquent on two separate occasions for a first or second degree crime and was previously incarcerated. Extended terms consist of five years for murder, two years for a crime of the first or second degree, and one year for a crime of the third degree. Under the bill, the extended sentence remains five years for murder, but increases from two to three years for all other first degree crimes. The bill also removes the requirement that the juvenile had to be previously incarcerated to be eligible for an extended sentence.

The bill further provides that if the prosecutor and defense consent, at any point in the proceedings subsequent to the decision granting waiver, the court may remand the case to juvenile court if it appears the interests of the public and the best interests of the juvenile requires access to programs or procedures uniquely available to that court and the interests of the public are no longer served by waiver to the adult criminal court.

The bill establishes data collection and reporting requirements concerning juvenile waiver. Biennial reports are to be published on the commission's website and transmitted to the Governor and the Legislature.

The bill also makes changes to the current law governing the transfer of juveniles from a juvenile facility to a State correctional facility.

Finally, the bill places limitations on the use of solitary confinement, or what is referred to in current JJC regulations as "room restriction," in State juvenile correctional facilities and juvenile detention centers. The bill prohibits a juvenile from being 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. The bill requires that the use of room restriction be documented by the facility or center and aggregate data is to be made available to the public under the State's Open Public Records Act. The JJC also is required to publish the aggregate data on its website.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services finds the fiscal impact of this bill to be indeterminate based on several unquantified factors.

The bill requires certain data collection and reporting requirements by the JJC and county facilities. Additional staff may be needed to collect, analyze, and generate these reports. Additionally, the bill requires specific data to be collected and it is unknown what, if any, technology the JJC and county facilities may require to meet this requirement.

The bill establishes a presumption that juveniles will serve custodial sentences in juvenile facilities. This presumption may lead to fewer juveniles being sentenced to adult correctional facilities. According to data provided in the Governor's proposed budget, as of 2015, Department of Corrections facilities such as Garden State Youth Correctional Facility (\$82.73 per day), Albert C. Wagner Youth Correctional Facility (\$140.10 per day), and Mountainview Youth Correctional Facility (\$115.97 per day) currently have a lower average daily cost per inmate than the Juvenile Justice Commission institutions (\$611.61 per day). The marginal daily cost per additional inmate will fluctuate depending on how many juveniles are sentenced to each of the respective facilities.

Additionally, data collected in 2009 indicated that 155 juveniles were waived to criminal court. Incarcerating additional juveniles in the JJC may result increased costs to the State. The bill requires that a juvenile being transferred from a juvenile facility to an adult facility be represented by the Office of the Public Defender or a non-profit entity, unless the juvenile chooses to engage private counsel at the juvenile's expense. It is unknown how many juveniles will be represented by a public defender versus nonprofit or private counsel.

Lastly, the bill revises the use of room restriction for juveniles of certain ages which may create a minimal expense if there is a need to relocate juveniles to alternate facilities to remedy issues such as inmate to inmate conflicts.

Section: Law and Public Safety
Analyst: Kristin Brunner Santos
Senior Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4299

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MARCH 16, 2015

Sponsored by:

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Assemblyman CHARLES MAINOR

District 31 (Hudson)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

SYNOPSIS

Makes certain reforms to juvenile justice system.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/2/2015)

1 AN ACT concerning juvenile justice and amending and
2 supplementing various parts of the statutory law.

3

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

6

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

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

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

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

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

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

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

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

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

45 (f) Crimes which are a part of a continuing criminal activity in

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.

1 concert with two or more persons and the circumstances of the
2 crimes show the juvenile has knowingly devoted himself to criminal
3 activity as a source of livelihood; or

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

6 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of
7 the New Jersey Statutes; or

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

14 (j) Computer criminal activity which would be a crime of the
15 first or second degree pursuant to section 4 or section 10 of
16 P.L.1984. c.184 (C.2C:20-25 or C.2C:20-31); and

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

29 b. (Deleted by amendment, P.L.1999, c.373).

30 c. An order referring a case shall incorporate therein not only
31 the alleged act or acts upon which the referral is premised, but also
32 all other delinquent acts arising out of or related to the same
33 transaction.

34 d. A motion seeking waiver shall be filed by the prosecutor
35 within ~~30~~ 60 days of receipt of the complaint. This time limit
36 shall not, except for good cause shown, be extended.

37 e. ~~【If the juvenile can show that the probability of his~~
38 ~~rehabilitation by the use of the procedures, services and facilities~~
39 ~~available to the court prior to the juvenile reaching the age of 19~~
40 ~~substantially outweighs the reasons for waiver, waiver shall not be~~
41 ~~granted】 A motion for waiver shall not be granted unless the
42 prosecution proves, by clear and convincing evidence, that the
43 reasons for waiver outweigh the probability of the juvenile's
44 rehabilitation by the use of the procedures, services and facilities
45 available to the court prior to the juvenile reaching the age of 26.~~

46 This subsection shall not apply with respect to a juvenile 16 years
47 of age or older who is charged with committing any of the acts
48 enumerated in subparagraph (a), (i) or (j) of paragraph (2) of

1 subsection a. of this section or with respect to a violation of
2 N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998, c.26
3 (C.2C:39-4.1).

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

8 (cf: P.L.2007, c.341, s.3)

9

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

16 a. Academic instruction and academic counseling, consistent
17 with State and federal law;

18 b. Vocational education and training;

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

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

24 e. Mental health treatment or counseling;

25 f. Medical and dental care and treatment;

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

30 h. Work programs that are designed to provide job skills and
31 specific employment training to enhance the employment readiness
32 of the juvenile;

33 i. Re-entry services to assist the juvenile in returning to the
34 community; and

35 j. Any other services or assistance reasonably related to the
36 rehabilitation of the juvenile.

37

38 3. Section 26 of P.L.1982, c.77 (C.2A:4A-45) is amended to
39 read as follows:

40 26. Retention of jurisdiction.

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

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

8 c. The court may by its order retain jurisdiction in any other
9 case.

10 d. Notwithstanding the administrative grievance procedure set
11 forth in regulations promulgated by the Executive Director of the
12 Juvenile Justice Commission, the juvenile may petition the court for
13 modification of the disposition pursuant to this section or to compel
14 the Juvenile Justice Commission to comply with the terms and
15 conditions of that disposition.

16 (cf: P.L.1995, c.280, s.13)

17

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

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

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

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

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

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

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

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

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

7 e. The commission and the Commissioner of **the Department**
8 **of** Corrections shall, consistent with applicable State and federal
9 standards, formulate a plan setting forth procedures for transferring
10 custody of any juvenile incarcerated in a juvenile facility who has
11 reached the age of **16** 18 during confinement and whose
12 continued presence in the juvenile facility threatens the public
13 safety, the safety of juvenile offenders, or the ability of the
14 commission to operate the program in the manner intended. The
15 commission and the Commissioner of **the Department of**
16 Corrections shall jointly adopt regulations pursuant to the
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
18 seq.), establishing the procedures included in the plan. At a
19 minimum, the plan shall require that:

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

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

24 (3) the juvenile be represented by counsel;

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

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

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

30
31 5. (New section) a. A juvenile detained in, or sentenced to, a
32 State juvenile correctional facility or county juvenile detention
33 center shall not be subject to solitary confinement unless the
34 juvenile poses an immediate and substantial risk of harm to others
35 or to the security of the facility, and all other less-restrictive options
36 have been exhausted.

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

43 c. A juvenile who is 15 years of age or younger shall not be
44 held in solitary confinement for more than two consecutive days. A
45 juvenile who is 16 years of age or older but younger than 18 years
46 of age shall not be held in solitary confinement for more than three
47 consecutive days. A juvenile who is 18 years of age or older shall
48 not be held in solitary confinement for more than five consecutive

1 days. A juvenile shall not be held in solitary confinement for more
2 than 10 total days in a calendar month.

3 d. Juveniles subject to solitary confinement shall continue to
4 receive health, mental health, and educational services.

5 e. Each State correctional facility or county juvenile detention
6 facility shall document, in aggregate, the use of solitary
7 confinement, including the dates and duration of each occurrence,
8 the reason for placement in solitary confinement, and the race, age,
9 and gender of the juvenile placed in solitary confinement. If any
10 health or mental health clinical evaluations were performed, it shall
11 be affirmatively certified that the results of those evaluations were
12 considered in any decision to place the juvenile in solitary
13 confinement or to continue solitary confinement.

14 The aggregate data compiled pursuant to this subsection shall be:

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

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

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

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

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

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

35
36 6. This act shall take effect on the first day of the seventh
37 month following enactment.

38

39

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STATEMENT

41

42 This bill makes various changes to this State's juvenile justice
43 system. Specifically, the bill revises the State's law governing
44 waiver; expands the jurisdiction of the family court over juveniles
45 placed in correctional facilities; requires due process before a
46 juvenile can be transferred to an adult correctional facility; and
47 imposes restrictions on the use of solitary confinement of juveniles.

1 Under the current juvenile waiver law, the Family Part of the
2 Chancery Division of the Superior Court, upon motion of the
3 prosecutor, must waive jurisdiction over a juvenile's case and refer
4 that case to the appropriate adult court and prosecuting authority,
5 without the juvenile's consent, if the following conditions are met:

- 6 (1) the juvenile is 14 years of age or older; and
- 7 (2) there is probable cause that the juvenile committed a
8 delinquent act which, if committed by an adult, would constitute
9 one of the crimes enumerated in the juvenile waiver statute; and
- 10 (3) the State establishes that the nature of the charge against the
11 juvenile or the juvenile's prior record is sufficiently serious that
12 waiver is in the public interest.

13 In accordance with these conditions, the court has discretion in
14 determining whether the State has met its burden of proving that
15 waiver of the juvenile to adult criminal court is in the public
16 interest. Waiver will not be granted by the court if a juvenile can
17 show that the probability of rehabilitation through the use of court
18 services by the time he or she is 19 years old outweighs the reasons
19 for waiver.

20 Under the bill, the age requirement for a juvenile case to be
21 transferred from family court to adult criminal court is raised from
22 14 years of age or older to 16 years of age or older. This is based
23 on new research on adolescent brain development disproving the
24 presumption that juveniles who commit crimes think like adults and
25 cannot be rehabilitated.

26 The bill also raises the age by which the juvenile can be
27 rehabilitated from 19 to 26. Also under the bill, the burden of proof
28 would shift to the prosecution to prove, by clear and convincing
29 evidence, that the reasons for waiver outweigh the probability of
30 rehabilitation by age 26.

31 The bill increases the time allotted to file a waiver motion from
32 30 to 60 days after receiving the complaint to allow adequate time
33 for investigation.

34 Current law requires the Juvenile Justice Commission (JJC) and
35 the Department of Corrections to formulate a plan setting forth
36 procedures for transferring juveniles from a juvenile facility to an
37 adult correctional facility upon reaching the age of 18 if the juvenile
38 poses a threat to the public safety or the safety of other juvenile
39 offenders, or impedes JJC operations. This bill requires that plan to
40 include specific provisions to ensure that: (1) the juvenile is
41 notified, in writing, of the proposed transfer and the factual basis
42 supporting the transfer; (2) the juvenile is provided with the
43 opportunity to be heard and to present opposition; (3) the juvenile
44 be represented by counsel; (4) the decision to proceed with the
45 transfer is made by an impartial person; and (5) written findings of
46 the facts supporting the decision to proceed with the transfer
47 accompany the decision.

48 The bill also expands the jurisdiction of the family court over

1 juvenile cases. Under the bill, a court that imposes a term of
2 incarceration is required to consider the rehabilitative, treatment,
3 and educational needs of the juvenile. The bill gives the court
4 discretion to order the JJC to provide the juvenile services and
5 assistance, such as (1) academic instruction and academic
6 counseling, consistent with State and federal law; (2) vocational
7 education and training; (3) post-secondary educational
8 opportunities, including but not limited to enrollment assistance and
9 college-level instruction; (4) a suitable program for the treatment of
10 alcohol or narcotic abuse if the juvenile has been determined to be
11 in need of these services; (5) mental health treatment or counseling;
12 (6) medical and dental care and treatment; (7) regular contact
13 through telephone calls and in-person visits with the juvenile's
14 parents, guardians, and other family members, including
15 transportation assistance upon showing a demonstrated need for this
16 assistance; (8) work programs that are designed to provide job skills
17 and specific employment training to enhance the employment
18 readiness of the juvenile; (9) re-entry services to assist the juvenile
19 in returning to the community; and (10) any other services or
20 assistance reasonably related to the rehabilitation of the juvenile.
21 The bill also authorizes the juvenile to petition the court for
22 modification of the disposition or to compel the Juvenile Justice
23 Commission to comply with the terms and conditions of that
24 disposition.

25 Finally, the bill places restrictions on the use of solitary
26 confinement in State correctional facilities and juvenile detention
27 centers. The bill prohibits a juvenile from being held in solitary
28 confinement, unless the juvenile poses an immediate and substantial
29 risk of harm to others or to the security of the facility, and all other
30 less-restrictive options have been exhausted.

31 The bill specifically prohibits a juvenile from being held in
32 solitary confinement for more than eight consecutive waking hours
33 without being released for at least two hours for recreation and
34 exercise. Under the bill, 14 and 15 year old juveniles are prohibited
35 from being held in solitary confinement for more than two
36 consecutive days; 16 and 17 year olds are prohibited from being
37 held in solitary confinement for more than three consecutive days;
38 and juveniles 18 years of age or older are prohibited from being
39 held in solitary confinement for more than five consecutive days.
40 Juveniles, regardless of their age, may not be held in solitary
41 confinement under the bill for more than 10 total days in a calendar
42 month. Juveniles are to continue to receive health, mental health,
43 and educational services when being held in solitary confinement.

44 The bill requires that the use of solitary confinement be
45 documented by the facility or center. The information is to include
46 the dates and duration of each occurrence, the reason for the
47 placement, race, age, and gender of the juvenile, and if any health
48 or mental health clinical evaluations were performed, that the

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1 results were considered in the decision to place the juvenile in
2 confinement. The aggregate data is to be made available to the
3 public under the State's Open Public Records Act. The Juvenile
4 Justice Commission also is required to publish the aggregate data
5 on its website.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 4299

STATE OF NEW JERSEY

DATED: JUNE 1, 2015

The Assembly Law and Public Safety Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 4299.

The Assembly Committee Substitute for Assembly Bill No. 4299 makes various changes to this State's juvenile justice system. Specifically, the committee substitute revamps the State's law governing waiver of juveniles to adult criminal court and increases certain extended sentences for juveniles; requires due process before a juvenile can be transferred to an adult correctional facility; and places limitations on the use of room restriction to discipline incarcerated juveniles.

Under this State's current juvenile waiver statute, a juvenile's case may be transferred to adult criminal court under certain circumstances. Whether a juvenile's case is waived depends on the age of the juvenile and whether probable cause is established that the juvenile committed the offense charged. In some instances, waiver depends upon whether it can be shown that the interests of the public require waiver and whether the juvenile can establish that the probability of rehabilitation through the use of court services by the time he or she is 19 years old outweighs the reasons for waiver.

Currently, a prosecutor has 30 days from the receipt of the complaint to file a waiver motion unless good cause is shown to extend this time period. If a prosecutor motions to waive the case of a juvenile who has reached the age of 16 or older and establishes the requisite probable cause that the juvenile committed a serious offense as enumerated in the statute, often referred to as a "chart 1" offense, the juvenile will automatically be waived to adult criminal court. This is referred to as "prosecutorial discretionary waiver." The chart 1 offenses include such offenses as criminal homicide (excluding death by auto), strict liability for drug-induced deaths, first degree robbery, aggravated sexual assault and sexual assault, possession of a firearm with the purpose to use it unlawfully against another person, leader of a narcotics trafficking network, maintaining and operating a controlled dangerous substance production facility, weapons possession while committing certain other controlled dangerous substance offenses, and first or second degree computer criminal activity.

Juveniles who are 14 or 15 years old and juveniles 16 years of age or older who are charged with less serious offenses, often referred to as “chart 2 offenses,” will be waived to adult criminal court if the State establishes that the nature of the charge against the juvenile or the juvenile’s prior record is sufficiently serious that waiver is in the public interest and if the juvenile fails to establish during an “amenability hearing” that the probability of rehabilitation outweighs the reasons for waiver. This is referred to as “judicial discretionary waiver.”

The committee substitute repeals the current juvenile waiver statute and replaces it with a streamlined process for determining whether a juvenile case should be transferred to an adult criminal court. Under the committee substitute, only juveniles who are 15 years of age and older and who are charged with certain chart 1 offenses as enumerated in the committee substitute would be eligible for waiver. The time allotted to the prosecutor to file a waiver motion is increased from 30 to 60 days after receiving the complaint.

Under the committee substitute, the waiver motion is to be accompanied by a written statement from the prosecutor clearly setting forth the facts used in assessing the waiver factors together with an explanation as to how evaluation of those facts support waiver for each particular juvenile. The court is to review during a hearing whether the prosecution considered the waiver factors. The court may deny the prosecutor’s waiver motion if it is clearly convinced that the prosecutor abused his discretion in considering those factors.

The committee substitute also provides that a juvenile whose case was waived would serve his or her sentence in a juvenile facility rather than an adult facility. Specifically, the juvenile’s case is to proceed in the adult criminal court as if the case originated there, including through sentencing, but there is a presumption that the juvenile will serve a custodial sentence in a juvenile facility until the juvenile reaches the age of 21. Juveniles under 21 years of age may be required to serve the sentence in a State correctional facility if the Juvenile Justice Commission (JJC) finds the juvenile’s continued presence in the facility threatens the public safety, the safety of juvenile offenders, or the operations of the commission. Also, a juvenile may continue to serve a sentence in a juvenile facility after reaching the age of 21 in the discretion of the commission and if the juvenile consents.

Also under the committee substitute, certain juvenile cases waived to an adult criminal court will be remanded to the juvenile court for sentencing, which is referred to as disposition under the juvenile code. Specifically, if a juvenile was not convicted of the offense on which the waiver was based, but was convicted of another offense, that offense is to be deemed a juvenile adjudication and will be remanded to the juvenile court for a disposition, which may include incarceration. The juvenile therefore would be subject to the penalties

under the juvenile code, rather than those under the adult criminal code.

In addition to revamping the current juvenile waiver statute, the committee substitute establishes a presumption that a juvenile whose case has been waived is to be detained in a juvenile facility pending resolution of the case and pending sentencing.

The committee substitute also changes the current law governing extended sentences for juveniles. Currently, the juvenile code provides for a custodial sentence of one year for a crime which, if committed by an adult, constitutes a fourth degree crime; two years for a third degree crime; three years for a second degree crime; four years for a first degree crime other than murder; and either 10 or 20 years for murder, depending on the circumstances. A prosecutor can apply for an extended term of incarceration if the juvenile was adjudicated delinquent on two separate occasions for a first or second degree crime and was previously incarcerated. Extended terms consist of five years for murder, two years for a crime of the first or second degree, and one year for a crime of the third degree. Under the committee substitute, the extended sentence remains five years for murder, but increases from two to three years for all other first degree crimes. The committee substitute also removes the requirement that the juvenile had to be previously incarcerated to be eligible for an extended sentence.

The committee substitute further provides that if the prosecutor and defense consent, at any point in the proceedings subsequent to the decision granting waiver, the court may remand the case to juvenile court if it appears the interests of the public and the best interests of the juvenile requires access to programs or procedures uniquely available to that court and the interests of the public are no longer served by waiver to the adult criminal court.

The committee substitute also establishes data collection and reporting requirements concerning juvenile waiver. Biennial reports are to be published on the commission's website and transmitted to the Governor and the Legislature. In addition, the committee substitute makes changes to the current law governing the transfer of juveniles from a juvenile facility to a State correctional facility.

Finally, the committee substitute places limitations on the use of solitary confinement, or what is referred to in current JJC regulations as "room restriction," in State juvenile correctional facilities and juvenile detention centers. The committee substitute prohibits a juvenile from being 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.

The committee substitute requires that the use of room restriction be documented by the facility or center and aggregate data is to be made available to the public under the State's Open Public Records

Act. The JJC also is required to publish the aggregate data on its website.

As reported by the committee, this committee substitute is identical to Senate Bill No. 2003 (2R), which was amended and reported on this same date.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 4299**

STATE OF NEW JERSEY

DATED: JUNE 15, 2015

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4299 (ACS).

This substitute makes various changes to this State's juvenile justice system. The bill revamps the State's law governing waiver of juveniles to adult criminal court and increases certain extended sentences for juveniles; requires due process before a juvenile can be transferred to an adult correctional facility; and places limitations on the use of room restriction to discipline incarcerated juveniles.

Under this State's current juvenile waiver statute, a juvenile's case may be transferred to adult criminal court under certain circumstances. Whether a juvenile's case is waived depends on the age of the juvenile and whether probable cause is established that the juvenile committed the offense charged. In some instances, waiver depends upon whether it can be shown that the interests of the public require waiver and whether the juvenile can establish that the probability of rehabilitation through the use of court services by the time the juvenile is 19 years old outweighs the reasons for waiver.

Currently, a prosecutor has 30 days from the receipt of the complaint to file a waiver motion unless good cause is shown to extend this time period. If a prosecutor motions to waive the case of a juvenile who has reached the age of 16 or older and establishes the requisite probable cause that the juvenile committed a serious offense as enumerated in the statute, often referred to as a "chart 1 offense," the juvenile will automatically be waived to adult criminal court. This is referred to as "prosecutorial discretionary waiver." The chart 1 offenses include such offenses as criminal homicide (excluding death by auto), strict liability for drug-induced deaths, first degree robbery, aggravated sexual assault and sexual assault, possession of a firearm with the purpose to use it unlawfully against another person, leader of a narcotics trafficking network, maintaining and operating a controlled dangerous substance production facility, weapons possession while committing certain other controlled dangerous substance offenses, and first or second degree computer criminal activity.

Juveniles who are 14 or 15 years old and juveniles 16 years of age or older who are charged with less serious offenses, often referred to

as “chart 2 offenses,” will be waived to adult criminal court if the State establishes that the nature of the charge against the juvenile or the juvenile’s prior record is sufficiently serious that waiver is in the public interest and if the juvenile fails to establish during an “amenability hearing” that the probability of rehabilitation outweighs the reasons for waiver. This is referred to as “judicial discretionary waiver.”

The substitute repeals the current juvenile waiver statute and replaces it with a streamlined process for determining whether a juvenile case should be transferred to an adult criminal court. Under the bill, only juveniles who are 15 years of age and older and who are charged with certain chart 1 offenses as enumerated in the bill would be eligible for waiver. The bill increases the time allotted to the prosecutor to file a waiver motion from 30 to 60 days after receiving the complaint.

The substitute requires the waiver motion to be accompanied by a written statement from the prosecutor clearly setting forth the facts used in assessing the waiver factors together with an explanation as to how evaluation of those facts support waiver for each particular juvenile. The bill directs the court to review during a hearing whether the prosecution considered the waiver factors. The court may deny the prosecutor’s waiver motion if the court is clearly convinced that the prosecutor abused the prosecutor’s discretion in considering those factors.

The substitute also provides that a juvenile whose case was waived would serve the juvenile’s sentence in a juvenile facility rather than an adult facility. The bill directs that the juvenile’s case is to proceed in the adult criminal court as if the case originated there, including through sentencing, but there is a presumption that the juvenile will serve a custodial sentence in a juvenile facility until the juvenile reaches the age of 21. Juveniles under 21 years of age may be required to serve the sentence in a State correctional facility if the Juvenile Justice Commission finds the juvenile’s continued presence in the facility threatens the public safety, the safety of juvenile offenders, or the operations of the commission. Also, a juvenile may continue to serve a sentence in a juvenile facility after reaching the age of 21 in the discretion of the commission and if the juvenile consents.

Also under the substitute, certain juvenile cases waived to an adult criminal court will be remanded to the juvenile court for sentencing, which is referred to as “disposition under the juvenile code.” Specifically, if a juvenile was not convicted of the offense on which the waiver was based, but was convicted of another offense, the bill directs that offense be deemed a juvenile adjudication and be remanded to the juvenile court for a disposition, which may include incarceration. The juvenile therefore would be subject to the penalties under the juvenile code, rather than those under the adult criminal code.

In addition to revamping the current juvenile waiver statute, the bill establishes a presumption that a juvenile whose case has been waived is to be detained in a juvenile facility pending resolution of the case and pending sentencing.

The substitute changes the current law governing extended sentences for juveniles. Currently, the juvenile code provides for a custodial sentence of one year for a crime which, if committed by an adult, constitutes a fourth degree crime; two years for a third degree crime; three years for a second degree crime; four years for a first degree crime other than murder; and either 10 or 20 years for murder, depending on the circumstances. A prosecutor can apply for an extended term of incarceration if the juvenile was adjudicated delinquent on two separate occasions for a first or second degree crime and was previously incarcerated. Extended terms consist of five years for murder, two years for a crime of the first or second degree, and one year for a crime of the third degree. Under the bill, the extended sentence remains five years for murder, but increases from two to three years for all other first degree crimes. The bill removes the requirement that the juvenile had to be previously incarcerated to be eligible for an extended sentence.

The substitute provides that if the prosecutor and defense consent, at any point in the proceedings subsequent to the decision granting waiver, the court may remand the case to juvenile court if it appears the interests of the public and the best interests of the juvenile require access to programs or procedures uniquely available to that court and the interests of the public are no longer served by waiver to the adult criminal court.

The substitute establishes data collection and reporting requirements concerning juvenile waiver; biennial reports are to be published on the commission's website and transmitted to the Governor and the Legislature.

The substitute makes changes to the current law governing the transfer of juveniles from a juvenile facility to a State correctional facility.

The substitute places limitations on the use of solitary confinement, or what is referred to in current Juvenile Justice Commission (JJC) regulations as "room restriction," in State juvenile correctional facilities and juvenile detention centers. The bill prohibits a juvenile from being 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.

The substitute requires that the use of room restriction be documented by the facility or center and aggregate data is to be made available to the public under the State's Open Public Records Act. The bill requires the JJC to publish the aggregate data on its website.

As reported by the committee, this substitute is identical to Senate Bill No. 2003 (2R), as also reported by the committee.

FISCAL IMPACT:

The substitute requires certain data collection and reporting requirements by the Juvenile Justice Commission, in cooperation with the Administrative Office of the Courts, the Attorney General, and the county prosecutors concerning waiver and room restriction. The bill requires that reports be published on the Internet as well as provided to the Governor and Legislature. The reporting requirements may require additional manpower for collection, analysis, and creation of reports.

The substitute adds to the list of serious offenses for which a juvenile may be waived to adult court and to an adult correctional facility; however, the bill provides a presumption juveniles will serve custodial sentences in juvenile facilities which may lead to fewer juveniles being sentenced to adult correctional facilities. According to data provided in the Governor's proposed budget, as of 2015 adult correctional facilities such as Garden State Youth (\$82.73 per day), Albert C. Wagner Youth (\$140.10 per day), and Mountainview Youth (\$115.97 per day) currently have a lower operating budget than the Juvenile Justice Commission institutions (\$611.61 per day). The daily cost per inmate will fluctuate depending on how many juveniles are sentenced to each of the respective facilities.

The substitute revises the requirement that a juvenile being transferred from a juvenile facility to an adult facility be represented by the Office of the Public Defender, unless the juvenile chooses to engage private counsel at the juvenile's expense. It is unknown how many juveniles will utilize the public defender versus engaging in private counsel.

The substitute revises room restriction guidelines for juveniles of certain ages which may create a minimal expense if there is a need to relocate juveniles to alternate facilities to remedy issues such as inmate-to-inmate conflicts.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4299
STATE OF NEW JERSEY
216th LEGISLATURE

DATED: JUNE 17, 2015

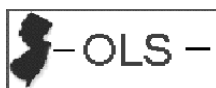
SUMMARY

- Synopsis:** Makes certain reforms to juvenile justice system.
- Type of Impact:** Indeterminate Increase.
- Agencies Affected:** Department of Law and Public Safety; Juvenile Justice Commission; Department of Corrections; Administrative Office of the Courts; Office of the Attorney General; Office of the Public Defender; County Juvenile Detention Facilities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State and County Cost	Indeterminate Increase - See comments below		

- The Office of Legislative Services finds the increased cost from enactment of this bill to be indeterminate.
- Requires certain data collection and reporting requirements by the Juvenile Justice Commission and county facilities.
- Establishes a presumption that certain juveniles will serve custodial sentences in juvenile facilities.
- Requires that a juvenile being transferred from a juvenile facility to an adult facility 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.
- Revises room restriction guidelines for juveniles of certain ages.



BILL DESCRIPTION

The Assembly Committee Substitute for Assembly Bill No. 4299 of 2014 makes various changes to this State's juvenile justice system.

Specifically, the bill revamps the State's law governing waiver of juveniles to adult criminal court and increases certain extended sentences for juveniles; requires due process before a juvenile can be transferred to an adult correctional facility; and places limitations on the use of room restriction to discipline incarcerated juveniles.

Under this State's current juvenile waiver statute, a juvenile's case may be transferred to adult criminal court under certain circumstances. Whether a juvenile's case is waived depends on the age of the juvenile and whether probable cause is established that the juvenile committed the offense charged. In some instances, waiver depends upon whether it can be shown that the interests of the public require waiver and whether the juvenile can establish that the probability of rehabilitation through the use of court services by the time he or she is 19 years old outweighs the reasons for waiver.

Currently, a prosecutor has 30 days from the receipt of the complaint to file a waiver motion unless good cause is shown to extend this time period. If a prosecutor motions to waive the case of a juvenile who is age 16 or older and establishes the requisite probable cause that the juvenile committed a serious offense as enumerated in the statute, often referred to as a "chart 1" offense, the juvenile will automatically be waived to adult criminal court. This is referred to as "prosecutorial discretionary waiver." The chart 1 offenses include criminal homicide (excluding death by auto), strict liability for drug-induced deaths, first degree robbery, aggravated sexual assault and sexual assault, possession of a firearm with the purpose to use it unlawfully against another person, leader of a narcotics trafficking network, maintaining and operating a controlled dangerous substance production facility, weapons possession while committing certain other controlled dangerous substance offenses, and first or second degree computer criminal activity.

Juveniles who are 14 or 15 years old and juveniles 16 years of age or older who are charged with less serious offenses, often referred to as "chart 2 offenses," will be waived to adult criminal court if the State establishes that the nature of the charge against the juvenile or the juvenile's prior record is sufficiently serious that waiver is in the public interest and if the juvenile fails to establish during an "amenability hearing" that the probability of rehabilitation outweighs the reasons for waiver. This is referred to as "judicial discretionary waiver."

The bill repeals the current juvenile waiver statute and replaces it with a streamlined process for determining whether a juvenile case should be transferred to an adult criminal court. Under the bill, only juveniles who are 15 years of age and older and who are charged with certain chart 1 offenses as enumerated in the bill would be eligible for waiver. The time allotted to the prosecutor to file a waiver motion is increased from 30 to 60 days after receiving the complaint.

Under the bill, the waiver motion is to be accompanied by a written statement from the prosecutor clearly setting forth the facts used in assessing the waiver factors together with an explanation as to how evaluation of those facts support waiver for each particular juvenile. The court is to review during a hearing whether the prosecution considered the waiver factors. The court may deny the prosecutor's waiver motion if it is clearly convinced that the prosecutor abused his discretion in considering those factors.

The bill also provides that a juvenile whose case was waived would serve his or her sentence in a juvenile facility rather than an adult facility. Specifically, the juvenile's case is to proceed in the adult criminal court as if the case originated there, including through sentencing, but there is a presumption that the juvenile will serve a custodial sentence in a juvenile facility until the juvenile reaches the age of 21. Juveniles under 21 years of age may be required to serve the sentence in a State correctional facility if the Juvenile Justice Commission (JJC) finds the

juvenile's continued presence in the facility threatens the public safety, the safety of juvenile offenders, or the operations of the commission. Also, a juvenile may continue to serve a sentence in a juvenile facility after reaching the age of 21 in the discretion of the commission and if the juvenile consents.

Also under the bill, certain juvenile cases waived to an adult criminal court will be remanded to the juvenile court for sentencing, which is referred to as disposition under the juvenile code. Specifically, if a juvenile was not convicted of the offense on which the waiver was based, but was convicted of another offense, that offense is to be deemed a juvenile adjudication and will be remanded to the juvenile court for a disposition, which may include incarceration. The juvenile therefore would be subject to the penalties under the juvenile code, rather than those under the adult criminal code.

In addition to revamping the current juvenile waiver statute, the bill establishes a presumption that a juvenile whose case has been waived is to be detained in a juvenile facility pending resolution of the case and pending sentencing.

The bill also changes the current law governing extended sentences for juveniles. Currently, the juvenile code provides for a custodial sentence of one year for a crime which, if committed by an adult, constitutes a fourth degree crime; two years for a third degree crime; three years for a second degree crime; four years for a first degree crime other than murder; and either 10 or 20 years for murder, depending on the circumstances. A prosecutor can apply for an extended term of incarceration if the juvenile was adjudicated delinquent on two separate occasions for a first or second degree crime and was previously incarcerated. Extended terms consist of five years for murder, two years for a crime of the first or second degree, and one year for a crime of the third degree. Under the bill, the extended sentence remains five years for murder, but increases from two to three years for all other first degree crimes. The bill also removes the requirement that the juvenile had to be previously incarcerated to be eligible for an extended sentence.

The bill further provides that if the prosecutor and defense consent, at any point in the proceedings subsequent to the decision granting waiver, the court may remand the case to juvenile court if it appears the interests of the public and the best interests of the juvenile requires access to programs or procedures uniquely available to that court and the interests of the public are no longer served by waiver to the adult criminal court.

The bill establishes data collection and reporting requirements concerning juvenile waiver. Biennial reports are to be published on the commission's website and transmitted to the Governor and the Legislature.

The bill also makes changes to the current law governing the transfer of juveniles from a juvenile facility to a State correctional facility.

Finally, the bill places limitations on the use of solitary confinement, or what is referred to in current JJC regulations as "room restriction," in State juvenile correctional facilities and juvenile detention centers. The bill prohibits a juvenile from being 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. The bill requires that the use of room restriction be documented by the facility or center and aggregate data is to be made available to the public under the State's Open Public Records Act. The JJC also is required to publish the aggregate data on its website.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services finds the fiscal impact of this bill to be indeterminate based on several unquantified factors.

The bill requires certain data collection and reporting requirements by the JJC and county facilities. Additional staff may be needed to collect, analyze, and generate these reports. Additionally, the bill requires specific data to be collected and it is unknown what, if any, technology the JJC and county facilities may require to meet this requirement.

The bill establishes a presumption that juveniles will serve custodial sentences in juvenile facilities. This presumption may lead to fewer juveniles being sentenced to adult correctional facilities. According to data provided in the Governor's proposed budget, as of 2015, Department of Corrections facilities such as Garden State Youth Correctional Facility (\$82.73 per day), Albert C. Wagner Youth Correctional Facility (\$140.10 per day), and Mountainview Youth Correctional Facility (\$115.97 per day) currently have a lower average daily cost per additional inmate than the Juvenile Justice Commission institutions (\$611.61 per day). The marginal daily cost per additional inmate will fluctuate depending on how many juveniles are sentenced to each of the respective facilities.

Additionally, data collected in 2009 indicated that 155 juveniles were waived to criminal court. Incarcerating additional juveniles in the JJC may result increased costs to the State. The bill requires that a juvenile being transferred from a juvenile facility to an adult facility be represented by the Office of the Public Defender or a non-profit entity, unless the juvenile chooses to engage private counsel at the juvenile's expense. It is unknown how many juveniles will be represented by a public defender versus nonprofit or private counsel.

Lastly, the bill revises the use of room restriction for juveniles of certain ages which may create a minimal expense if there is a need to relocate juveniles to alternate facilities to remedy issues such as inmate to inmate conflicts.

Section: Law and Public Safety
Analyst: Kristin Brunner Santos
Senior Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).