

2A:85-4

2A:4-48 and 2A:4-49

LEGISLATIVE HISTORY CHECKLIST

(Age of responsibility for criminal acts changed to age 14)

NJSA 2A:85-4; 2A:4-48 and 2A:4-49

Laws of 1977 Chapter 364

Bill No. A1641

Sponsor(s) Markert and others

Date Introduced March 3, 1976

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate -----

Amended during passage Yes No

Date of passage: Assembly Nov. 28, 1977

Senate Dec. 15, 1977

Date of approval February 1, 1978

Following statements are attached if available:

Sponsor statement Yes (Below) No

Committee Statement: Assembly No

Senate No

Fiscal Note No

Veto message No

Message on signing No

Following were printed:

Reports Yes No

Hearings No

Sponsor's Statement:

This bill lowers the age of responsibility for criminal acts by a juvenile to 14 years.

(over)

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10/4/76

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974.90 N.J. Governor's Adult and Juvenile
c929 Justice Advisory Committee.
1977b Standards and goals for the N.J.
criminal justice system: final report.
(see pp. 224-225; 277-278; 337)

974.90 (Typed Draft of same report)
c929 Parallel page references: 782-783,
1977 982-986, 1167-1168.
v.2

ASSEMBLY, No. 1641

STATE OF NEW JERSEY

INTRODUCED MARCH 3, 1976

By Assemblymen MARKERT, FORAN, ALBANESE, WEIDEL,
RYS, SPIZZIRI, Assemblywoman BURGIO, Assemblymen
KEAN, HURLEY, KAVANAUGH and Assemblywoman
CURRAN

Referred to Committee on Judiciary, Law, Public Safety and Defense

AN ACT concerning jurisdiction for certain crimes committed by
juveniles over the age of 14 years, and amending N. J. S. 2A:85-4
and P. L. 1973, c. 306.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2A:85-4 is amended to read as follows:

2 2A:85-4. A person under the age of **[16]** 14 years is deemed
3 incapable of committing a crime.

1 2. Section 7 of P. L. 1973, c. 306 (C. 2A:4-48) is amended to read
2 as follows:

3 7. Referral to other court without juvenile's consent. The juve-
4 nile and domestic relations court may, without the consent of the
5 juvenile, waive jurisdiction over a case and refer that case to the
6 appropriate court and prosecuting authority having jurisdiction
7 if it finds, after hearing, that:

8 a. The juvenile was **[16]** 14 years of age or older at the time of
9 the charged delinquent act;

10 b. There is probable cause to believe that the juvenile committed
11 a delinquent act which would constitute homicide, treason if com-
12 mitted by an adult or committed an offense against the person
13 in an aggressive, violent and willful manner or committed a
14 delinquent act which would have been a violation of section 19
15 of the Controlled Dangerous Substances Act (P. L. 1970, c. 226;
16 C. 24:21-19) if committed by an adult and the juvenile, at the time
17 he committed the act, was not addicted to a narcotic drug as that
18 term is defined in section 2 of the Controlled Dangerous Substances
19 Act (P. L. 1970, c. 226; C. 24:21-2); and

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

20 c. The court is satisfied that adequate protection of the public
21 requires waiver and is satisfied there are no reasonable prospects
22 for rehabilitation of the juvenile prior to his attaining the age of
23 majority by use of the procedures, services and facilities available
24 to the court.

1 3. Section 8 of P. L. 1973, c. 306 (C. 2A:4-49) is amended to
2 read as follows:

3 8. Referral to other court at election of juvenile. Any juvenile
4 **[16]** 14 years of age or older, charged with delinquency may elect
5 to have the case transferred to the appropriate court having
6 jurisdiction.

1 4. This act shall take effect immediately.

STATEMENT

This bill lowers the age of responsibility for criminal acts by a
juvenile to 14 years.

N.J. GOVERNOR'S HOULT & JUVENILE JUSTICE ADVISORY COMM.
STANDARDS & GOALS FOR THE NJ CRIMINAL JUSTICE
SYSTEM: FINAL REPORT. 1977.

1. Juveniles in custody should be informed of the above at the start of the initial detention hearing.

2. For juveniles who are not detained, written notification of the above should be sent to the juvenile and his or her parents, guardian or custodian as soon as possible.

3. Promptly after a determination is made to schedule a complaint for an adjudicatory hearing, the juvenile and his or her parents, guardian or custodian should be notified that counsel should be retained and if counsel cannot be afforded or is not otherwise provided, arrangements should be made to provide public counsel or to have counsel appointed.

Standard 4.5 Juvenile Court Calendaring

Juvenile court cases should be processed without delay. For delinquency matters, the following time table should govern the court calendar:

1. Detention hearings within 24 hours of a juvenile's detention.

2. Where counsel was not present at the initial detention hearing and the juvenile has not been released, a second detention hearing scheduled with counsel within two court days.

3. Continued detention review hearings every 14 days.

4. Adjudicatory hearings scheduled within 15 days from the filing of complaint for juveniles who are detained and 30 days from the filing of a complaint if not detained.

5. Disposition hearings within 14 days of adjudicatory hearings if detained and within 21 days in all other cases.

The court calendar should, where possible, be structured so as to avoid having a judge with pre-judicial contacts with a case preside at the adjudicatory hearing.

Calendaring should follow a policy favoring hearing priorities for:

1. Young, immature and emotionally troubled juveniles;

2. Juveniles detained or removed from their usual home environment; and

3. Where an immediate adjudicatory hearing would best serve the interests of the juvenile and the community.

Standard 4.6 Discovery and Disclosure

Discovery in delinquency matters should be as full and free as possible. Discovery inspection and deposition practices should be identical to criminal court practices as mandated by the Court Rules Governing Criminal Practice (R. 3:13-1, 2, 3).

Standard 4.7 Motion Practice

Court rules should be developed similar to R. 3:10 for the regulation of motion practice in juvenile or family court, requiring motions normally to be made in writing and when appropriate to be supported by affidavit. The rules should specify time limits for the filing of motions and for serving on opposing parties and should prescribe procedures for securing motion hearings.

The rules governing motions should provide for extra-judicial conferences between the parties before motions are argued, whenever discovery motions are filed and in other appropriate circumstances.

Requests for continuances should be made in the usual course of motion practice. Untimely motions for continuances should be granted only for exigent reasons.

Standard 4.8 Referral to Criminal Court

Any juvenile, 16 years of age or older, who is charged with delinquency may, only after advice of counsel, elect to have the case transferred to the appropriate court and prosecuting attorney having jurisdiction. The juvenile court judge shall include in his or her opening statement notification of the right of the juvenile to request that the matter be referred to another court. If the juvenile makes such a request, the judge shall forthwith refer the complaint to the appropriate prosecuting attorney.

The court may, without the consent of the juvenile and after a waiver hearing, waive jurisdiction over a case and refer that case to the appropriate court and prosecuting attorney having jurisdiction if it finds:

1. The juvenile was 16 years of age or older at the time of the charged delinquent act; and

2. There is probable cause to believe that the juvenile committed an act which would constitute homicide or treason if committed by an adult; or committed an offense against a person in an aggressive, violent and willful manner; or committed a delinquent act which would have been a violation of section 19 of the Controlled Dangerous Substances Act excluding marijuana offenses if committed by an adult and the juvenile, at the time the act was committed, was not dependent upon any controlled dangerous substance as defined by the Controlled Dangerous Substances Act; and

3. The court is satisfied that the adequate protection of the public requires waiver and is satisfied there are no reasonable prospects for rehabilitation of the juvenile prior to his or her attaining the age of majority by use of the proceedings, services and facilities available to the court pursuant to law.

Waiver hearings before the court shall be construed as preliminary in nature, and the court shall provide where appropriate for the representation of the juvenile and his or her parent, guardian or custodian. No testimony of a juvenile at such a hearing shall be admissible for any purpose in any hearing to determine delinquency or guilt of any offense.

The court or the prosecuting attorney may institute waiver proceedings. A motion for a hearing should be filed within seven days of notification of filing a complaint and a hearing on the motion should be held within 10 days of the motion.

Adjudication

Standard 4.9 Requisites for Adjudication Proceedings

A written complaint giving the juvenile notice of the charges is a prerequisite for beginning adjudication proceedings. Adjudicatory hearings should not begin without the presence of the juvenile, the complainant and attorneys for the juvenile and the State. The juvenile's parents, guardian or custodian should be present throughout the proceeding. A guardian *ad litem* should be appointed for the juvenile whose parents, guardian or custodian are hostile or non-supportive or who fail to appear.

Complaints should be allowed to be amended with the court's permission prior to an admission to the charges or at or before the close of the State's case.

Standard 4.10 Acceptance of an Admission to a Delinquency Complaint

Prior to accepting an admission to a delinquency complaint, the judge should inquire thoroughly into the circumstances of that admission. The judge should, in the first instance, determine that the juvenile has the capacity to understand the nature and consequences of the proceeding and his or her legal rights and should determine whether the admission is knowingly and voluntarily offered.

1. In making such an inquiry, the court should address the youth personally, in simple language, and determine that he or she understands the nature of the allegations.

2. The court should satisfy itself that the juvenile understands the nature of those rights which are waived by an entry of an admission and the consequences of waiving them.

3. The court should inform the juvenile of the most restrictive disposition which could be imposed.

4. Notwithstanding the acceptance of a plea of admit, the court should not enter a judgment upon such plea without making such inquiry as may

satisfy it that there is a factual basis for the plea.

5. Except where the parent or guardian is the complainant, the court should consider the parent's or guardian's responses in determining whether to accept or reject a tendered plea of admit.

The judge should not participate in plea discussions or negotiations. If a tentative plea agreement has been reached between the prosecuting attorney and the juvenile through defense counsel which contemplates entry of an admission in the expectation that other charges before the court will be dismissed or that disposition concessions will be granted, upon request of the parties the judge may permit the disclosure to the court of the tentative agreement and the reasons therefore in advance of the time for tender of the admission. The judge may then indicate to the prosecuting attorney and defense counsel whether he or she will concur in the proposed disposition if supported by information in the subsequent social investigation or pre-disposition report.

1. When an admission is tendered or received as a result of a prior plea agreement, the judge should give the agreement due consideration, but notwithstanding its existence, should reach an independent decision on whether to grant charge or disposition concessions.

2. Pleas of admission should not be accepted by the court without determining that the plea is voluntary and informing the juvenile that any concessions recommended by the prosecuting attorney are not binding on the court.

3. Means of coercion as outlined in Trial Preparation Standard 9.5 should render any admission unacceptable.

4. The court should not impose upon a juvenile any disposition in excess of that which should be justified because the juvenile has chosen to require the prosecuting attorney to prove his or her guilt beyond a reasonable doubt at a hearing rather than to enter a plea of admission.

Standard 4.11 Plea Withdrawal

If the judge concurs with the plea agreement but later finds that the social investigation information does not support the recommended disposition, the juvenile should be asked to reaffirm or withdraw the plea.

1. Prior to disposition, the court should allow a juvenile to withdraw an admission for any fair and just reason.

2. After final disposition, the court should allow a juvenile to withdraw a plea of admission whenever the juvenile proves that withdrawal is necessary to correct a manifest injustice.

3. A plea of admission which is withdrawn or refused should not be admissible as evidence in any subsequent proceeding against the juvenile.

child who is considered incorrigible, beyond control, who runs away or is truant is ultimately beneficial.⁷ Any positive effects frequently appear to be accompanied, if not eroded, by self-fulfilling effects of the labeling process. A report⁸ completed by Vanderbilt University and issued by the U.S. Department of Health, Education and Welfare concluded that labels such as "delinquent" make it easier for teachers or social workers to excuse their inability to help a child.⁹ There is also support for the conclusion that labeling helps to perpetuate and strengthen delinquent behavior. Juveniles so labeled often conceptualize themselves as "delinquent" and act accordingly; families and teachers react to such juveniles as "delinquent." The deleterious effect of labeling youth as "delinquent" or "in need of supervision" is an often asserted justification for limiting court jurisdiction to as few youths as possible.

The National Council of Crime and Delinquency (NCCD) advocates the removal of status offenses from juvenile court jurisdiction as well as the repeal of all laws that subject adults to criminal sanctions for behavior that does no harm to others.¹⁰ NCCD agrees with those who say that subjecting a child to judicial sanction for a status offense helps neither child nor society—instead it often does harm. It is frequently maintained that the juvenile court can utilize coercive powers fairly and efficiently against criminal behavior but that it cannot deliver or regulate rehabilitative services. Noncoercive community services must bear the responsibility for dealing with socially unacceptable but noncriminal behavior of children.

On the other hand, many argue that if jurisdiction over status offenders were removed from the courts these juveniles would lose needed services. Some believe that court jurisdiction over status offenders enables them to receive intensive supervision and schooling, thus enhancing the possibility of a successful adjustment in the community.¹¹ By maintaining court jurisdiction over status offenses, families and juveniles who need services and cannot secure them from voluntary agencies can petition the court for help. Many system practitioners and commentators have been reluctant to put their faith in voluntary agencies, reasoning that most families and children before the court probably have previously sought help from these agencies and may have been rejected.¹² Voluntary community agencies frequently have preferential admission policies and may discriminate against those who need services most. Therefore, it is argued, status jurisdiction must be retained because if the courts do not act in such cases, no one else will.

Judge David Bazelon of the U.S. District Court of Appeals, District of Columbia, has concluded that precisely the opposite is the case: because the court acts, no one else does. "Schools and public agencies refer their problem cases to you [the judges] be-

cause you have jurisdiction, because you exercise it, and because you hold out promises that you can provide solutions."¹³ Those who agree with Judge Bazelon argue that the inclusion of status offenses permits parents, schools and other community agencies to evade responsibility for handling youth problems. Supreme Court Justice William O. Douglas has commented, "The constitutional contours of the problem [of delinquency] are still being drawn. Important as that process may be, a court is not the medium where the problems of juvenile delinquency will ultimately be solved. The solution can emerge only from the community."¹⁴

Juvenile court jurisdiction is defined not only in terms of offenses or behavior but also by age. In designating age limits, most states have generally followed the common law principle that young children are incapable of harboring criminal thoughts or understanding the real significance of criminal actions.

The principle of mitigating the criminal responsibility of children has ancient origins. Under Roman law, puberty was the age of accountability. Common law followed Roman law and attempted to settle the puberty distinction by designating arbitrary ages. Justice Heher, in his concurring opinion in *State v. Monahan*, 15 N.J. 34, 104 A. 2d 21 (1954), summed up the common law principle:

A child is not criminally responsible at common law for his acts or omissions if he is of such tender years as to be incapable of distinguishing between right and wrong, and of understanding the nature of the particular act. At common law (1) under the age of seven years the presumption of incapacity is conclusive; (2) between the ages of seven and 14 years there is a rebuttable presumption of incapacity; and (3) above the age of 14 years there is a rebuttable presumption of capacity (15 N.J. at 47).

New Jersey's designation of juvenile court jurisdictional age limits is rooted in common law. In 1903, county courts for juvenile offenders, consisting of the judges of the Courts of Common Pleas, were established (L. 1903, C. 219). In 1912, courts manned by special juvenile court judges were set up in first class counties. A comprehensive statutory revision was adopted in 1929, establishing Juvenile and Domestic Relations Courts and defining their jurisdiction over children under the age of 16 years (L. 1929, C. 157; R.S. 9:18-1 et seq.).

The question remained, however, whether Juvenile and Domestic Relations Courts had exclusive jurisdiction over all juveniles under the age of 16, regardless of the offense. Legislation passed in 1935 provided that any person under the age of 16 shall be deemed incapable of committing a crime, including felony, high misdemeanor, misdemeanor or other offense (L. 1935, C.C. 284, 285). Notwithstanding the express terms of statutory law, the court concluded in *In re Mei*, 122 N.J. Eq. 125 (E. & A. 1937)

that the Juvenile and Domestic Relations Court did not have jurisdiction over murder cases.¹⁵

The subsequent case of *State v. Monahan*, 15 N.J. 34, 104 A. 2d 21 (1954) effectively settled the issue by overturning *Mei* and holding that the juvenile court has exclusive jurisdiction over misconduct by children under 16, including misconduct which would constitute murder or other heinous crime if committed by an adult. In clarifying juvenile court jurisdiction over persons between the ages of 16 and 18, the Legislature in 1946 stated that the juvenile court may waive jurisdiction over a juvenile age 16 or older and refer the matter to the prosecutor for trial where the offense was of a heinous nature (L. 1946, C. 77; N.J.S.A. 2A:4-15).

New Jersey Juvenile and Domestic Relations Courts have exclusive jurisdiction "in all cases where it is charged that a juvenile has committed an act of delinquency or is in need of supervision" (N.J.S.A. 2A:4-46). If the juvenile is age 16 or older, however, the court may waive jurisdiction over a case and refer that case to the appropriate court and prosecuting authority if: 1) there is probable cause to believe the juvenile committed an act that if committed by an adult would constitute homicide or treason, committed an offense against the person in an aggressive, violent and willful manner, or committed certain Controlled Dangerous Substances Act violations; and 2) the court is satisfied that adequate protection of the public requires waiver and there are no reasonable prospects for rehabilitation prior to attaining the age of majority by use of the procedures, services and facilities available to the juvenile court (N.J.S.A. 2A:4-48). The law also provides that juveniles over the age of 16 charged with delinquency may elect to have their cases referred to adult court (N.J.S.A. 2A:4-49).

Inevitably there will be dissention on whether age boundaries are too inclusive or too restrictive with regard to persons who should be treated as juveniles or sent to adult court. Ideally, waiver should be limited to being a means for subjecting to criminal court jurisdiction those persons who are clearly not appropriate subjects of the juvenile justice system. The types of offenses that are designated as waivable are those which are most likely to shock the public's conscience and motivate it to demand punishment. In recent years the waiver mechanism has been the subject of much debate particularly for this reason. Many believe the waiver process is of questionable validity, frequently discriminatory and not sufficiently regulated. The President's Commission on Law Enforcement and the Administration of Justice has concluded:

The substance behind the waiver procedure . . . remains unrecognized for what it really is: Not a scientific evaluation of whether the youth will respond successfully to a juvenile court disposition but a front

for society's insistence on retribution or social protection.¹⁶

Guidelines for waiver have characteristically been vague. Although New Jersey has required a waiver hearing since prior to the *Kent* decision, disagreement regarding the types of offenses which should be considered waivable and other appropriate criteria for waiver continues to resurface. A recurring issue is whether the age limit and/or applicable criteria for waiver should be relaxed to give the court more discretion to permit prosecution as an adult. Some contend that present requirements for waiver are too restrictive. Few would argue that the juvenile system has been unable to deal effectively with juveniles who commit violent and aggressive acts or who are hardened repeat offenders. Many such juveniles, especially repeat offenders, are cognizant that, because of their age, they will be treated more leniently than if they were adults. Less restrictive criteria would facilitate the waiver to adult criminal court of violent and/or hardened repeat offenders who are considered inappropriate for juvenile justice processing.

On the other hand, many question the usefulness of waiver since juveniles tried as adults are sent to the same correctional institutions as are juveniles over age 16 who are adjudicated "delinquent." In addition, present court rules require only two day's notice of a waiver hearing for defense counsel and many agree this is not long enough to allow counsel to prepare an adequate representation.

Most juvenile court law and procedure is directed toward the adjudicatory hearing, with little attention paid to the pre-adjudicatory stage. Since the majority of cases never reach the hearing step, competent guidelines which structure the early stages of court involvement are equally necessary. Nevertheless, such guidelines are insufficient. Many of the activities carried on during this time period—discovery, motions, diversion decisions, negotiations, admissions of guilt—are vital, if not as important as the hearing itself. These events and procedures set the tone for the hearing and have a significant effect on its outcome.

Although many states, including New Jersey, function with court rules relating to the juvenile process, regulations governing pre-adjudicatory procedures tend to be vague. Civil and/or criminal court rules are frequently relied upon to fill gaps.¹⁷ Confusion seems to exist in many jurisdictions regarding the proper approach to such pre-adjudicatory mechanisms, particularly since these procedures are associated with criminal trials and seem awkward in a juvenile setting.

Juvenile court discovery has been given little attention by existing statutes, court decisions and model court acts. Some court opinions have held that although delinquency cases can be considered civil in nature, broad civil discovery rules do not au-

Jersey, the difference between a "usual" stay of 21 days and a "usual" stay of 30 days per child admitted to detention would amount to a significant cost factor. For example, assume that 1,200 children would be admitted to detention on a yearly basis. At a stay of 21 days each, a total of 25,200 child care days would be given, but at 30 days each the number of child care days jumps to 36,000. At a minimum of

\$25.00 per child care day the 30 day stays would cost \$270,000 a year more than the 21 day stays. Approximately 37 more detention beds would be needed to accommodate the 30 day stays, and if these beds had to be obtained through new construction at \$40,000 per bed, the total additional cost for bed space would be \$1,480,000.

DISSENTING OPINION OF BURRELL IVES HUMPHREYS, PASSAIC COUNTY PROSECUTOR, REGARDING THE WAIVER PROCESS IN JUVENILE MATTERS

I respectfully dissent from the Advisory Committee's recommended standard on the waiver of juveniles to criminal court. With reference to Juvenile Judicial Process Standard 4.8, I recommend the waiver to adult court should be lowered to age 15 and the court should be given more discretion to permit adult crime prosecution in appropriate cases. Under the present law juveniles who should be receiving adult treatment are in my opinion not receiving it because the language of the waiver statute and rule puts too great a burden on the State and unduly restricts the court's discretion. I have submitted a revised form of the waiver statute to the New Jersey Supreme Court Committee on Juvenile Practice. A copy of that recommended revised statute follows.

Proposed Revision of the Referral Statute Suggested
By Burrell Ives Humphreys and Thomas L. Ferro,
Prosecutor and Assistant Prosecutor of Passaic
County

2A:4-48. Referral to Other Court Without Juvenile's
Consent.

The Juvenile and Domestic Relations Court shall upon motion of the prosecutor and without the consent of the juvenile, waive jurisdiction over a case and refer that case to the appropriate court and prosecuting authority having jurisdiction if it finds, after hearing, that:

(a) the juvenile was 15 years of age or older at the time of the charged delinquent act;

(b) there is probable cause to believe that the juvenile committed a delinquent act which would constitute, if committed by an adult,

(1) homicide;

(2) treason;

(3) robbery;

(4) rape;

(5) arson;

(6) any assault classified as a high misdemeanor;

(7) any offense against the person committed in an aggressive, violent and willful manner;

(8) possession of a silencer contrary to *N.J.S.A. 2A:151-14*;

(9) a violation of section 19 of the Controlled Dangerous Substances Act (P.L. 1970, c. 226; C. 24:21-19);

(10) any offense classified as a high misdemeanor where the juvenile has two or more prior convictions for offenses which if committed by an adult would have been high misdemeanors; or

(11) conspiracy to commit any of the offenses enumerated in (1) through (10) inclusive; and

(c) the court is satisfied from an examination of the nature of the offense charged or from the juvenile's prior record of convictions, if any, or both, that adequate protection of the public requires waiver.