

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:4A-20 to 2A:4A-49; ("Code of Juvenile Justice")  
2A: 4-41; 2C:4-11

CHAPTER 77

Laws Of: 1982

Bill No: A641

Sponsor(s): Herman and others

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Committee: Assembly: -----

Senate: Judiciary

Amended during passage: Yes Amendments during passage denoted by asterisks

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Senate: May 24, 1982

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Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: Yes

Hearings: No

974.90 New Jersey. State Family Court Committee.  
C866 Report...to the 6-24-83 Judicial Conference.  
1983d Trenton, 1983.

974.90 Family part operations and organization: draft report.  
C866 December, 1983.  
1983c

(Over)

Handwritten vertical text: "COPY" and "Herman" (partially obscured)

- 974.90 New Jersey. Juvenile Justice Task Force. Advisory Committee on  
J97 Pre-Trial Practices.  
1981e Final report...January, 1981. Trenton, 1981.
- 974.90 New Jersey. Juvenile Justice Task Force. Advisory Committee on  
J97 "Determinate/Indeterminate Sentencing"  
1981c Final report...January, 1981. Trenton, 1981.
- 974.90 New Jersey. Juvenile Justice Task Force. Advisory Committee on  
J97 "Alternative Dispositions/Community-based Programs."  
1981 Final report...January, 1981. Trenton, 1981.
- 974.90 New Jersey. County Prosecutors Association.  
J97 A legislative proposal for juvenile justice. Trenton,  
1980b 1980.
- 974.90 New Jersey. Legislature. General Assembly. Judiciary, Law  
J97 Public Safety and Defense Committee. Subcommittee on Juvenile Justice.  
1980 Report...May 8, 1980. Trenton, 1980.

Parts 1,2,3

- 974.90 New Jersey. Legislature. General Assembly. Judiciary, Law  
J97 Public Safety and Defense Committee. Subcommittee on Juvenile Justice.  
1979c Report and recommendations on juvenile violence, vandalism,  
parental responsibility and the juvenile justice system.  
November 8, 1979. Trenton, 1979.
- 974.90 New Jersey. Legislature. General Assembly. Judiciary Committee.  
J97 Subcommittee on Juvenile Justice.  
1979 Public hearing...held 7-31-79, 8-13-79, 8-28-79, Middletown,  
West Deptford and Jersey City, 1979.
- 974.90 New Jersey. Administrative Office of the Courts.  
J97 Guide for juvenile conference committees appointed  
1978 by the juvenile and domestic relations courts... July,  
1978. Trenton, 1978.
- 974.901 New Jersey Juvenile Delinquency Disposition Commission.  
C35.7 The impact of the New Jersey Juvenile Justice Code...  
First annual report, September 19, 1986. Trenton, 1986.
- New Jersey. Supreme Court Committee.  
Report...May 14, 1981.  
(107 NJLJ 440)  
441
- New Jersey. Supreme Court. Family Division Liason Committee.  
Report...July 24, 1986.  
(118 NJLJ 85)
- New Jersey. Supreme Court. Committee on Family Division Practice.  
Report...July 25, 1985.  
(116 NJLJ 147)

See also newspaper clipping file "New Jersey-Juvenile courts-1981 and 1982" in New Jersey Reference Department.

Note: Public hearing, referred to in 1986 Supreme Court Committee report--not a public document

CHAPTER 77 LAWS OF N. J. 1982  
APPROVED 7-23-82

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 641

STATE OF NEW JERSEY

INTRODUCED JANUARY 19, 1982

By Assemblymen HERMAN, KERN, DOYLE, THOMPSON, KAVANAUGH, GORMLEY, KARCHER, GORMAN, VISOTCKY, BOCCHINI, BROWN, PANKOK, D. GALLO, ROCCO, JANISZEWSKI, BRYANT, MARSELLA, Assemblywoman COSTA, Assemblyman MARKERT, Assemblywoman PERUN, Assemblymen SCHWARTZ, FORTUNATO, DORIA, PATERNITI, MATTHEWS, ZANGARI, FLYNN, GIRGENTI, PELLECCIA, MAZUR, BAER, DEVERIN, LESNIAK, Assemblywoman WRIGHT, Assemblymen FRANKS, HENDRICKSON, WOLF, ROD, KOSCO, SCHUBER, SHUSTED, HARDWICK, LaCORTE, MILLER, ALBOHN, Assemblywoman BROWN, Assemblymen GILL, BENNETT, PALAIA, SMITH, PATERO and ADUBATO

(Without Reference)

AN ACT concerning juvenile proceedings and jurisdiction and amending and repealing various portions of the statutory law.

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

1 1. This act shall be known and may be cited as the "New Jersey  
2 Code of Juvenile Justice."

1 2. Purposes. This act shall be construed so as to effectuate the  
2 following purposes:

3 a. To preserve the unity of the family whenever possible and  
4 to provide for the care, protection and, wholesome mental and  
5 physical development of juveniles coming within the provisions  
6 of this act;

7 b. Consistent with the protection of the public interest, to remove  
8 from children committing delinquent acts certain statutory con-

**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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted February 8, 1982.

9 sequences of criminal behavior, and to substitute therefor an ade-  
10 quate program of supervision, care and rehabilitation;

11 c. To separate juveniles from the family environment only when  
12 necessary for their health, safety or welfare or in the interests  
13 of public safety;

14 d. To secure for each child coming under the jurisdiction of the  
15 court such care, guidance and control, preferably in his own home,  
16 as will conduce to the child's welfare and the best interests of the  
17 State; and when such child is removed from his own family, to  
18 secure for him custody, care and discipline as nearly as possible  
19 equivalent to that which should have been given by his parents.

20 e. To insure that children under the jurisdiction of the court are  
21 wards of the State, subject to the discipline and entitled to the  
22 protection of the State, which may intervene to safeguard them  
23 from neglect or injury and to enforce the legal obligations due to  
24 them and from them.

1 3. General definitions. As used in this act:

2 a. "Juvenile" means an individual who is under the age of 18  
3 years.

4 b. "Adult" means an individual 18 years of age or older.

5 c. "Detention" means the temporary care of juveniles in physi-  
6 cally restricting facilities pending court disposition.

7 d. "Shelter care" means the temporary care of juveniles in  
8 facilities without physical restriction pending court disposition.

9 e. "Commit" means to transfer legal custody to an institution.

10 f. "Guardian" means a person, other than a parent, to whom  
11 legal custody of the child has been given by court order or who is  
12 acting in the place of the parent or is responsible for the care and  
13 welfare of the juvenile.

14 g. "Juvenile-family crisis" means behavior, conduct or a condi-  
15 tion of a juvenile, parent or guardian or other family member which  
16 presents or results in (1) a serious threat to the well-being and  
17 physical safety of a juvenile, or (2) a serious conflict between a  
18 parent or guardian and a juvenile regarding rules of conduct which  
19 has been manifested by repeated disregard for lawful parental  
20 authority by a juvenile or misuse of lawful parental authority by a  
21 parent or guardian, or (3) unauthorized absence by a juvenile for  
22 more than 24 hours from his home, or (4) a pattern of repeated  
23 unauthorized absences from school by a juvenile subject to the  
24 compulsory education provision of Title 18A of the New Jersey  
25 Statutes.

26 h. "Repetitive disorderly persons offense" means the second or  
27 more disorderly persons offense committed by a juvenile on at least

28 two separate occasions and at different times.

29 i. "Court" means the Family Court unless a different meaning  
30 is plainly required.

1 4. Definition of delinquency. As used in this act, "delinquency"  
2 means the commission of an act by a juvenile which if committed  
3 by an adult would constitute:

4 a. A crime;

5 b. A disorderly persons offense or petty disorderly persons  
6 offense; or

7 c. A violation of any other penal statute, ordinance or regula-  
8 tion.

9 But, the commission of an act which constitutes a violation of  
10 chapters 3, 4, 6 or 8 of Title 39, Motor Vehicles, of the Revised  
11 Statutes, or of any amendment or supplement thereof, by a juvenile  
12 of or over the age of 17 years shall not constitute delinquency as  
13 defined in this act.

1 5. Exclusive jurisdiction of the court and nature of jurisdiction.

2 a. Except as otherwise provided by law, the court shall have ex-  
3 clusive jurisdiction in all cases where it is charged that a juvenile  
4 has committed an act of delinquency and over all matters relating  
5 to a juvenile-family crisis. Upon the determination that a juvenile  
6 has committed an act of delinquency or that a juvenile-family crisis  
7 exists, the court may impose such disposition or dispositions over  
8 those persons subject to its jurisdiction consistent with the purposes  
9 of this act.

10 Such jurisdiction shall extend in these matters over a juvenile  
11 and his parent, guardian or any family member found by the court  
12 to be contributing to a juvenile-family crisis. The court shall, in  
13 accordance with the Rules of Court, clearly specify the responsi-  
14 bilities of those subject to its jurisdiction with respect to the plan  
15 of rehabilitation for the juvenile.

16 b. The court shall have jurisdiction in respect to the custody of  
17 any juvenile who may be held as a material witness in any case  
18 pending in the court. Whenever a juvenile is a material witness in  
19 any other court, the procedures established by this act shall be  
20 followed.

21 c. Juveniles who appear before the court in any capacity shall  
22 be deemed to be wards of the court and protected accordingly.

23 d. Nothing in this act shall affect the jurisdiction of other courts  
24 over offenses committed after a juvenile under the jurisdiction of  
25 the court reaches the age of 18 years.

1 6. Transfer from other courts. Except as provided in section 4,  
2 and unless jurisdiction has been waived under section 7, if during

3 the pendency in any other court of a case charging a person with a  
4 crime, offense or violation, it is ascertained that such person was a  
5 juvenile at the time of the crime, offense or violation charged, such  
6 court shall immediately transfer such case to the family court hav-  
7 ing jurisdiction. The family court shall thereupon proceed in the  
8 same manner as if the case had been instituted in that court in the  
9 first instance.

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

2 a. On motion of the prosecutor, the court shall, without the  
3 consent of the juvenile, waive jurisdiction over a case and refer  
4 that case from the family court to the appropriate court and prose-  
5 cuting authority having jurisdiction if it finds, after hearing, that:

6 (1) The juvenile was 14 years of age or older at the time of the  
7 charged delinquent act; and

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

11 (a) Criminal homicide other than death by auto, robbery  
12 which would constitute a crime of the first degree, aggravated  
13 sexual assault, sexual assault, aggravated assault which would  
14 constitute a crime of the second degree, kidnapping or aggra-  
15 vated arson; or

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

20 (c) A crime committed at a time when the juvenile had  
21 previously been sentenced and confined in an adult penal in-  
22 stitution; or

23 (d) An offense against a person committed in an aggressive,  
24 violent and willful manner, other than an offense enumerated  
25 in subsection a. (2) (a) of this section, or the unlawful posses-  
26 sion of a firearm, destructive device or other prohibited weapon,  
27 or arson; or

28 (e) A violation of section 19 of the "Controlled Dangerous  
29 Substances Act" (P. L. 1970, c. 226; C. 24:21-19); or

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

34 (g) An attempt or conspiracy to commit any of the acts  
35 enumerated in paragraphs (a), (d) or (e) of this subsection;  
36 and

37 (3) Except with respect to any of the acts enumerated in sub-  
38 section a. (2) (a) of this section or any attempt or conspiracy to  
39 commit any of those acts, the State has shown \***[by a preponderance**  
40 **of the evidence]**\* that the nature and circumstances of the charge  
41 or the prior record of the juvenile are sufficiently serious that the  
42 interests of the public require waiver.

43 \***[(4)]**\* However, if in any case the juvenile can show \***[by a**  
44 **preponderance of the evidence that he can be rehabilitated]**\* *\*that*  
45 *the probability of his rehabilitation\** by the use of the procedures,  
46 services and facilities available to the court prior to the juvenile  
47 reaching the age of 19 \***[and the court is satisfied by a weighing of**  
48 **all of the evidence that the reasons for the waiver are substantially**  
49 **outweighed by the juvenile's probability for rehabilitation]**\* *\*sub-*  
49A *stantially outweighs the reasons for waiver\**, waiver shall not be  
49B granted.

50 b. In every case where there is a motion seeking waiver, the  
51 prosecutor shall within a reasonable time thereafter file a statement  
52 with the Attorney General setting forth the basis for the motion.  
53 In addition, the court shall, in writing, state its reasons for granting  
54 or denying the waiver motion. The Attorney General shall compile  
55 this information and report its findings to the Legislature 18 months  
56 after the effective date of this act with the objective of developing,  
57 where appropriate, guidelines as to the waiver of juveniles from  
58 the family court.

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

63 d. A motion seeking waiver shall be filed by the prosecutor within  
64 30 days of receipt of the complaint. This time limit shall not,  
65 except for good cause shown, be extended.

1 8. Referral to other court at election of juvenile. Any juvenile  
2 14 years of age or older charged with delinquency may elect to  
3 have the case transferred to the appropriate court having juris-  
4 diction. Any juvenile under 14 years of age charged with an  
5 offense which, if committed by an adult, would constitute murder  
6 under N. J. S. 2C:11-3 may elect to have the case transferred to  
7 the appropriate court having jurisdiction.

1 9. Effect of referral to other court. Whenever a case is referred  
2 to another court as provided by section 7 or 8, that case shall  
3 thereafter proceed in the same manner as if the case had been  
4 instituted in that court in the first instance.

1 10. Use of juvenile's testimony at referral hearing. No testimony

2 of a juvenile at a hearing pursuant to section 7 or 8 shall be admis-  
3 sible for any purpose in any hearing to determine delinquency or  
4 guilt of any offense.

1 11. Complaints and petitions. a. Complaints charging delin-  
2 quency may be assigned by any person who has knowledge of the  
3 facts alleged to constitute delinquency or is informed of such facts  
4 and believes that they are true. The complaint shall be filed with  
5 the clerk of the court and shall set forth:

6 (1) The name, address, and date of birth of the juvenile;

7 (2) The name and address of the juvenile's parents or guardian  
8 and, if the juvenile is in custody of some other person, the name  
9 and address of the custodian;

10 (3) The date, time, manner, and place of the acts alleged as the  
11 basis of the complaint;

12 (4) A citation of the law or ordinance allegedly violated by the  
13 juvenile; and

14 (5) The signature of the complainant.

15 b. Petitions alleging that a juvenile-family crisis exists shall be  
16 signed by court intake services pursuant to *\*section 8 of\** P. L.  
17 . . . . ., c. . . . (now pending before the Legislature as Assembly Bill  
18 No. **\*[645]\* \*644\***). The petition shall be filed with the clerk of the  
19 court and shall set forth:

20 (1) The name, address, and date of birth of the juvenile;

21 (2) The name and address of the juvenile's parents or guardian  
22 and, if the juvenile is in custody of some other person, the name  
23 and address of the custodian;

24 (3) The date, time, manner, and place of the behavior, conduct,  
25 or condition alleged as the basis of the petition; and

26 (4) The signature of the petitioner.

27 c. Complaints and petitions shall be in such form as prescribed  
28 by the Rules of Court.

1 12. Taking into custody. a. A juvenile may be taken into custody:

2 (1) Pursuant to an order or warrant of any court having  
3 jurisdiction; or

4 (2) For delinquency, when there has been no process issued  
5 by a court, by a law enforcement officer, pursuant to the laws of  
6 arrest and the Rules of Court.

7 b. Except where delinquent conduct is alleged, a juvenile may  
8 be taken into short-term custody by a law enforcement officer  
9 without order of the court when:

10 (1) The officer has reasonable grounds to believe that the health  
11 and safety of the juvenile is seriously in danger and taking into  
12 immediate custody is necessary for his protection;



13 (2) The officer has reasonable grounds to believe the juvenile has  
 14 left the home and care of his parents or guardian without the con-  
 15 sent of such persons; or

16 (3) An agency legally charged with the supervision of a child  
 17 has notified the law enforcement agency that the child has run  
 18 away from out of home placement, provided, however, that in any  
 19 case where the law enforcement officer believes that the juvenile is  
 20 an "abused or neglected child" as defined in section 1 of P. L.  
 21 1974, c. 119 (C. 9:6-8.21), the officer shall handle the case pursuant  
 22 to the procedure set forth in that act.

23 c. The taking of a juvenile into custody shall not be construed  
 24 as an arrest, but shall be deemed a measure to protect the health,  
 25 morals and well being of the juvenile.

1 13. Short-term custody. a. Under no circumstances shall any  
 2 juvenile taken into short-term custody under section 12 of this  
 3 act be held more than 6 hours. A juvenile taken into short-term  
 4 custody shall not be retained in a detention facility or jail. As  
 5 used in this section, the juvenile-family crisis intervention unit  
 6 means that unit established pursuant to P. L. . . . ., c. . . . .  
 7 (now pending before the Legislature as Assembly Bill No. \***[ . . . ]**\*  
 7A \*644\*).

8 b. An officer taking a juvenile into short-term custody shall in-  
 9 form the juvenile of the reason for custody and shall where possible  
 10 transport, or arrange to have the juvenile transported to his home.  
 11 The officer releasing a juvenile from such custody shall inform  
 12 the juvenile's parents or guardian and the juvenile-family crisis  
 13 intervention unit of the reason for taking the juvenile into custody  
 14 and may, if he believes further services are needed, inform the  
 15 juvenile and his parents of the nature and location of appropriate  
 16 services.

17 c. A law enforcement officer taking a juvenile into short-term  
 18 custody may transport the juvenile to the home of a relative of  
 19 the juvenile or to the home of another responsible adult or make  
 20 arrangement for such transportation where the officer reasonably  
 21 believes that the child will be provided with adequate care and  
 22 supervision and that the child will remain in custody of the adult  
 23 until such time as the juvenile-family crisis intervention unit can  
 24 bring about the child's return home or an alternative living arrange-  
 25 ment or out of home placement. A law enforcement officer placing  
 26 a juvenile with a relative or responsible adult shall immediately  
 27 notify the juvenile-family crisis intervention unit of this fact and  
 28 the reason for taking the juvenile into custody.

29 d. A law enforcement officer acting reasonably and in good faith  
30 pursuant to this section in releasing a juvenile to a person other  
31 than a parent of a juvenile is immune from civil or criminal liability  
32 for his action. A person other than a parent of the juvenile who  
33 receives a child pursuant to this section and who acts reasonably  
34 and in good faith in doing so is immune from civil or criminal  
35 liability for the act of receiving the child. Immunity shall not  
36 release a person from liability under any other laws, including  
37 the laws regulating licensed child care or prohibiting child abuse  
38 and neglect.

1 14. Taking into custody; notice to parents. a. Any person taking  
2 a juvenile into custody shall immediately notify the parents, or  
3 the juvenile's guardian, if any, that the juvenile has been taken  
4 into custody.

1 15. Criteria for placing juvenile in detention. a. Where it will  
2 not adversely affect the health, safety or welfare of a juvenile, the  
3 juvenile shall be released pending the disposition of a case, if any,  
4 to any person or agency provided for in this section upon assurance  
5 being received that such person or persons accept responsibility for  
6 the juvenile and will bring him before the court as ordered.

7 b. No juvenile shall be placed in detention without the permission  
8 of a judge or the court intake service.

9 c. A juvenile charged with delinquency may not be placed or  
10 retained in detention under this act prior to disposition, except as  
11 other wise provided by law, unless:

12 (1) Detention is necessary to secure the presence of the juvenile  
13 at the next hearing as evidenced by a demonstrable record of recent  
14 willful failure to appear at juvenile court proceedings or to remain  
15 where placed by the court or the court intake service or based on  
16 information presented to the court on the record that there is a  
17 likelihood that the juvenile will not appear at the next court pro-  
18 ceeding; or

19 (2) The physical safety of persons or property of the community  
20 would be seriously threatened if the juvenile were not detained and  
21 the juvenile is charged with an offense which, if committed by an  
22 adult:

23 (a) Would constitute a crime, or would constitute a repeti-  
24 tive disorderly persons offense, provided that the judge  
25 determines that there is a likelihood that upon adjudication  
26 of delinquency for that disorderly persons offense a custodial  
27 disposition will be ordered, or

28 (b) Would constitute a high misdemeanor as defined by the  
29 "New Jersey Controlled Dangerous Substances Act" (P. L.

30 1970, c. 226; C. 24:21-1 et seq.).

31 d. The judge or court intake officer prior to making a decision of  
32 detention shall consider and, where appropriate, employ any of the  
33 following alternatives:

34 (1) Release to parents;

35 (2) Release on juvenile's promise to appear at next hearing;

36 (3) Release to parents, guardian or custodian upon written  
37 assurance to secure the juvenile's presence at the next hearing;

38 (4) Release into care of a custodian or public or private agency  
39 reasonably capable of assisting the juvenile to appear at the next  
40 hearing;

41 (5) Release with imposition of restrictions on activities, associa-  
42 tions, movements and residence reasonably related to securing the  
43 appearance of the juvenile at the next hearing;

44 (6) Release with required participation in a home detention  
45 program;

46 (7) Placement in a shelter care facility; or

47 (8) Imposition of any other restrictions other than detention or  
48 shelter care reasonably related to securing the appearance of the  
49 juvenile.

50 e. In determining whether detention is appropriate for the  
51 juvenile, the following factors shall be considered:

52 (1) The nature and circumstances of the offense charged;

53 (2) The age of the juvenile;

54 (3) The juvenile's ties to the community;

55 (4) The juvenile's record of prior adjudications, if any; and

56 (5) The juvenile's record of appearance or nonappearance at  
57 previous court proceedings.

58 f. No juvenile 11 years of age or under shall be placed in deten-  
59 tion unless he is charged with an offense which, if committed by an  
60 adult, would be a crime of the first or second degree or arson.

61 g. If the court places a juvenile in detention, the court shall state  
62 on the record its reasons for that detention.

1 16. Release of juvenile on own recognizance. A juvenile charged  
2 with delinquency may be released at either the police or court level  
3 on his own recognizance if all of the following circumstances have  
4 been met:

5 a. The nature of the offense charged is not such that a danger  
6 to the community would exist if the juvenile were released;

7 b. There is no parent, guardian or other appropriate adult  
8 custodian to whom the juvenile could be released and all reasonable  
9 measures have been exhausted by either police or court personnel  
10 to locate and contact any such person;

11 c. The juvenile is at least 14 years of age;  
12 d. The identity and address of the juvenile are verified through  
13 a positive form of identification; and

14 e. Reasonable certainty exists on the part of the releasing au-  
15 thority that upon release, the juvenile will return to school or home  
16 safely and will appear at his hearing.

1 17. Detention of waiver cases. a. If the court waives jurisdiction  
2 over a case and refers that case to the appropriate court and  
3 prosecuting authority, there shall be a hearing before the court  
4 waiving jurisdiction to decide whether to remand the juvenile to a  
5 juvenile or adult detention facility. The decision shall be based on  
6 the best interests of the juvenile and protection of the public, and  
7 shall take into account such factors as the juvenile's age and  
8 maturity, the nature and circumstances of the offense charged, the  
9 juvenile's prior offense history, the programs at each of the de-  
10 tention facilities, and any other relevant factors.

11 b. No juvenile who has been waived to an appropriate adult court  
12 may be remanded to an adult detention facility prior to the hearing  
13 provided for in subsection a.

1 18. Place of detention or shelter. a. The State Department of  
2 Corrections shall specify the place where a juvenile may be de-  
3 tained; and the Department of Human Services shall specify where  
4 a juvenile may be placed in shelter.

5 b. No juvenile shall be placed in detention or shelter care in any  
6 place other than that specified by the State Department of Cor-  
7 rections or Department of Human Services as provided in sub-  
8 section a.

9 c. A juvenile being held for a charge under this act including  
10 a juvenile who has reached the age of 18 years after being charged,  
11 shall not be placed in any prison, jail or lockup nor detained in any  
12 police station, except that if no other facility is reasonably available  
13 a juvenile may be held in a police station in a place other than one  
14 designed for the detention of prisoners and apart from any adult  
15 charged with or convicted of crime for a brief period if such holding  
16 is necessary to allow release to his parent, guardian, other suitable  
17 person, or approved facility. No juvenile shall be placed in a deten-  
18 tion facility which has reached its maximum population capacity,  
19 as designated by the Department of Corrections.

20 d. No juvenile charged with delinquency shall be transferred to  
21 an adult county jail solely by reason of having reached age 18.

22 e. (1) The Department of Corrections and the Department of  
23 Human Services, shall promulgate such rules and regulations from  
24 time to time as deemed necessary to establish minimum physical

25 facility and program standards for juvenile detention facilities or  
26 shelters under their respective supervision.

27 (2) The Department of Corrections and the Department of  
28 Human Services, in consultation with the appropriate county ad-  
29 ministrator of the county facility or shelter, shall assign a maximum  
30 population capacity for each juvenile detention facility or shelter  
31 based on minimum standards for these facilities.

32 f. (1) Where either the Department of Corrections or the De-  
33 partment of Human Services determines that a juvenile detention  
34 facility or shelter under its control or authority is regularly over  
35 the maximum population capacity or is in willful and continuous  
36 disregard of the minimum standards for these facilities or shelters,  
37 the department may restrict new admissions to the facility or  
38 shelter.

39 (2) Upon making such determination, the department shall notify  
40 the governing body of the appropriate county of its decision to  
41 impose such a restriction, which notification shall include a written  
42 statement specifying the reasons therefor and corrections to be  
43 made. If the department shall determine that no appropriate action  
44 has been initiated by the administrator of the facility or shelter  
45 within 60 days following such notification to correct the violations  
46 specified in the notification, it shall order that such juvenile deten-  
47 tion facility or shelter shall immediately cease to admit juveniles.  
48 The county shall be entitled to a hearing where such a restriction  
49 is imposed by the department.

50 (3) Any juvenile detention facility or shelter so restricted shall  
51 continue under such order until such time as the department deter-  
52 mines that the violation specified in the notice has been corrected  
53 or that the facility or shelter has initiated actions which will ensure  
54 the correction of said violations.

55 (4) Upon the issuance of an order to cease admissions to a  
56 juvenile detention facility or shelter, the department shall deter-  
57 mine which other juvenile detention facilities or shelters have ade-  
58 quate room for admitting juveniles and shall assign the juveniles  
59 to the facilities or shelters on the basis of available space provided  
60 that the department shall not assign the juvenile to a facility or  
61 shelter where such facility or shelter is at the maximum population.  
62 A juvenile detention facility or shelter ordered to accept a juvenile  
63 shall do so within 5 days following the receipt of an order to accept  
64 admission of such juvenile.

65 (5) A juvenile detention facility or shelter restricted by an order  
66 to cease admissions shall assume responsibility for the transporta-  
67 tion of a juvenile sent to another juvenile detention facility or

68 shelter so long as the order shall remain in effect.

69 (6) A facility or shelter receiving juveniles pursuant to para-  
70 graph (4) of this subsection shall receive from the sending county  
71 a reasonable and appropriate per diem allowance for each juvenile  
72 sent to the facility, such allowance to be used for the custody, care,  
73 maintenance, and any other services normally provided by the  
74 county to juveniles in the facility or shelter and which reflects all  
75 county expenditures in maintaining such juvenile, including a pro-  
76 portionate share of all buildings and ground costs, personnel costs,  
77 including fringe benefits, administrative costs and all other direct  
78 and indirect costs.

79 (7) The governing body of a county whose juvenile detention  
80 facility or shelter has been prohibited from accepting new admis-  
81 sions, and whose juveniles have been assigned to other juvenile  
82 detention facilities or shelters, shall appropriate an amount to pay  
83 the county receiving such juveniles for all expenses incurred pur-  
84 suant to paragraph (6) of this subsection.

1 19. Detention hearing. a. When a juvenile is taken into custody  
2 a complaint shall be filed forthwith as provided by the Rules of  
3 Court. The court shall determine whether detention is required  
4 pursuant to the criteria provided for in section 15 of this act.

5 b. Notice of the detention hearing, either oral or written, stating  
6 the time, place, and purpose of the hearing shall be given to the  
7 juvenile and to his or her parent or parents, or guardian, if any,  
8 if they can be contacted.

9 c. The detention hearing shall be conducted in accordance with  
10 the Rules of Court and shall be attended by the juvenile and one  
11 or both parents, or guardian, but may take place in the absence  
12 of parent or guardian if such notice or process fails to produce  
13 their attendance.

14 d. When the judge finds that detention is not necessary or re-  
15 quired, the court shall order the juvenile's release and may place  
16 such conditions, if any, upon release as are consistent with the  
17 purposes of this act, Rules of Court, and as are provided for in  
18 section 15 of this act.

19 e. The initial detention hearing shall be held no later than the  
20 morning following the juvenile's placement in detention including  
21 weekends and holidays.

22 f. If a delinquency complaint has not been filed by the time the  
23 initial detention hearing has been held, the juvenile shall be re-  
24 leased from custody immediately.

25 g. When the court determines that detention is necessary pur-  
26 suant to section 15 of this act, the court order continuing the

27 juvenile's detention shall be supported by reasons and findings of  
28 fact on the record.

29 h. If the juvenile is not represented by counsel at the initial  
30 detention hearing and if the court continues his detention after the  
31 hearing, the court shall forthwith schedule a second detention  
32 hearing to be held within 2 court days thereafter at which time the  
33 juvenile shall be represented by counsel as provided by the Rules  
34 of Court.

35 i. There shall be a probable cause determination where a juvenile  
36 has been charged with delinquency and has been placed in deten-  
37 tion, within 2 court days after the initial hearing or, where a second  
38 detention hearing is necessary pursuant to subsection h. of this  
39 section, at that hearing.

40 j. A detention review hearing with counsel shall be held within  
41 14 court days of the prior detention hearing and if detention is  
42 continued, detention review hearings shall be held thereafter at  
43 intervals not to exceed 21 court days.

44 k. When a juvenile is detained, an adjudicatory hearing shall be  
45 held no later than 30 days from the date of detention. If no ad-  
46 judicatory hearing is held within 30 days, the court shall, within  
47 72 hours of a motion by the juvenile, fix a date certain for the  
48 adjudicatory hearing unless an extension is granted by the court  
49 for good cause shown. Written notice of any application for a post-  
50 ponement shall be sent to the juvenile's counsel who shall have the  
51 right to be heard on the application.

1 20. Right to counsel. a. A juvenile shall have the right, as pro-  
2 vided by the Rules of Court, to be represented by counsel at every  
3 critical stage in the proceeding which, in the opinion of the court  
4 may result in the institutional commitment of the juvenile.

5 b. During every court proceeding in a delinquency case, the  
6 waiving of any right afforded to a juvenile shall be done in the  
7 following manner:

8 (1) A juvenile who is found to be competent may not waive any  
9 rights except in the presence of and after consultation with counsel,  
10 and unless a parent has first been afforded a reasonable opportunity  
11 to consult with the juvenile and the juvenile's counsel regarding  
12 this decision. The parent or guardian may not waive the rights  
13 of a competent juvenile.

14 (2) Any such waiver shall be executed in writing or recorded.  
15 Before the court may accept a waiver, the court shall question the  
16 juvenile and his counsel to determine if the juvenile is knowingly,  
17 willingly and voluntarily waiving his right. If the court finds after

18 questioning the juvenile that the waiver is not being made volun-  
19 tarily and intelligently, the waiver shall be denied.

20 (3) An incompetent juvenile may not waive any right. A  
21 guardian ad litem shall be appointed for the juvenile who may  
22 waive rights after consultation with counsel for the juvenile, and  
23 the juvenile.

24 (4) Waivers shall be executed in the language regularly spoken  
25 by the juvenile.

1 21. Rights of juveniles. All defenses available to an adult charged  
2 with a crime, offense or violation shall be available to a juvenile  
3 charged with committing an act or delinquency.

4 All rights guaranteed to criminal defendants by the Constitution  
5 of the United States and the Constitution of this State, except the  
6 right to indictment, the right to trial by jury and the right to bail,  
7 shall be applicable to cases arising under this act.

1 22. Dispositional hearing. Where a juvenile is adjudicated de-  
2 linquent, the disposition of the case shall be entered within 30  
3 days of such adjudication if the juvenile has been placed in a de-  
4 tention center or shelter-care facility. If the juvenile is so placed  
5 and no disposition of the case is made after 30 days, the court shall,  
6 upon motion of the juvenile, fix a date certain for the dispositional  
7 hearing which shall be within 10 days of the motion, unless an  
8 extension is granted by the court for good cause shown. Disposition  
9 shall be made in all other cases within 60 days unless an extension  
10 is granted by the court where good cause is shown. The court shall  
11 provide written notice to the proper parties as to the date, time and  
12 place of such hearing and do so sufficiently in advance of the  
13 hearing to allow adequate time for preparation.

1 23. Predispositional evaluation. a. Before making a disposition,  
2 the court may refer the juvenile to an appropriate individual,  
3 agency or institution for examination and evaluation.

4 b. In arriving at a disposition, the court may also consult with  
5 such individuals and agencies as may be appropriate to the juve-  
6 nile's situation, including the county probation department, the  
7 Division of Youth and Family Services, school personnel, clergy,  
8 law enforcement authorities, family members and other interested  
9 and knowledgeable parties. In so doing, the court may convene a  
10 predispositional conference to discuss and recommend disposition.

1 24. Disposition of delinquency cases. a. In determining the ap-  
2 propriate disposition for a juvenile adjudicated delinquent the  
3 court shall weigh the following factors:

4 (1) The nature and circumstances of the offense;



5 (2) The degree of injury to persons or damage to property  
6 caused by the juvenile's offense;

7 (3) The juvenile's age, previous record, prior social service re-  
8 ceived and out-of-home placement history;

9 (4) Whether the disposition supports family strength, responsi-  
10 bility and unity and the well-being and physical safety of the  
11 juvenile;

12 (5) Whether the disposition provides for reasonable participa-  
13 tion by the child's parent, guardian, or custodian, provided, how-  
14 ever, that the failure of a parent or parents to cooperate in the  
15 disposition shall not be weighted against the juvenile in arriving  
16 at an appropriate disposition;

17 (6) Whether the disposition recognizes and treats the unique  
18 physical, psychological and social characteristics and needs of the  
19 child;

20 (7) Whether the disposition contributes to the developmental  
21 needs of the child, including the academic and social needs of the  
22 child where he has mental retardation or learning disabilities; and

23 (8) Any other circumstances related to the offense and the  
24 juvenile's social history as deemed appropriate by the court.

25 b. If a juvenile is adjudged delinquent the court may order in-  
26 carceration pursuant to section 25 of this act or any one or more  
27 of the following dispositions:

28 (1) Adjourn formal entry of disposition of the case for a period  
29 not to exceed 12 months for the purpose of determining whether the  
30 juvenile makes a satisfactory adjustment, and if during the period  
31 of continuance the juvenile makes such an adjustment, dismiss the  
32 complaint;

33 (2) Release the juvenile to the supervision of his or her parent  
34 or guardian;

35 (3) Place the juvenile on probation to the chief probation officer  
36 of the county or to any other suitable person who agrees to accept  
37 the duty of probation supervision for a period not to exceed 3 years  
38 upon such written conditions as the court deems will aid rehabili-  
39 tation of the juvenile;

40 (4) Transfer custody of the juvenile to any relative or other  
41 person determined by the court to be qualified to care for the  
42 juvenile;

43 (5) Place the juvenile under the care of the Department of  
44 Human Services under the responsibility of the Division of Youth  
45 and Family Services pursuant to P. L. 1951, c. 138, s. 2(c) (C.  
46 30:4C-2 (c)) for the purpose of providing services in or out of

47 the home. Within 14 days, unless for good cause shown, but not  
48 later than 30 days, the Department of Human Services shall submit  
49 to the court a service plan, which shall be presumed valid, detailing  
50 the specifics of any disposition order. The plan shall be developed  
51 within the limits of fiscal and other resources available to the  
52 department. If the court determines that the service plan is inap-  
53 propriate, given existing resources, the department may request a  
54 hearing on that determination;

55 (6) Place the juvenile under the care and custody of the Com-  
56 missioner of the Department of Human Services for the purpose of  
57 receiving the services of the Division of Mental Retardation of that  
58 department, provided that the juvenile has been determined to be  
59 eligible for those services under P. L. 1965, c. 59, s. 16 (C. 30:4-25.4);

60 (7) Commit the juvenile, pursuant to the laws governing civil  
61 commitment, to the Department of Human Services under the  
62 responsibility of the Division of Mental Health and Hospitals for  
63 the purpose of placement in a suitable public or private hospital  
64 or other residential facility for the treatment of persons who are  
65 mentally ill, on the ground that the juvenile, if not committed, would  
66 be a probable danger to himself or others or property by reason of  
67 mental illness;

68 (8) Fine the juvenile an amount not to exceed the maximum  
69 provided by law for such a crime or offense if committed by an  
70 adult and which is consistent with the juvenile's income or ability  
71 to pay and financial responsibility to his family, provided that the  
72 fine is specially adapted to the rehabilitation of the juvenile or to  
73 the deterrence of the type of crime or offense. If the fine is not paid  
74 due to financial limitations, the fine may be satisfied by requiring  
75 the juvenile to submit to any other appropriate disposition provided  
76 for in this section;

77 (9) Order the juvenile to make restitution to a person or entity  
78 who has suffered loss resulting from personal injuries or damage  
79 to property as a result of the offense for which the juvenile has  
80 been adjudicated delinquent. The court may determine the reason-  
81 able amount, terms and conditions of restitution. If the juvenile  
82 participated in the offense with other persons, the participants  
83 shall be jointly and severally responsible for the payment of resti-  
84 tution. The court shall not require a juvenile to make full or partial  
85 restitution if the juvenile reasonably satisfies the court that he does  
86 not have the means to make restitution and could not reasonably  
87 acquire the means to pay restitution;

88 (10) Order that the juvenile perform community services under  
89 the supervision of a probation department or other agency or indi-

90 vidual deemed appropriate by the court. Such service shall be  
91 compulsory and reasonable in terms of nature and duration. Such  
92 services may be performed without compensation, provided that  
93 any money earned by the juvenile from the performance of com-  
94 munity services may be applied towards any payment of restitution  
95 or fine which the court has ordered the juvenile to pay;

96 (11) Order that the juvenile participate in work programs which  
97 are designed to provide job skills and specific employment training  
98 to enhance the employability of job participants. Such programs  
99 may be without compensation, provided that any money earned by  
100 the juvenile from participation in a work program may be applied  
101 towards any payment of restitution or fine which the court has  
102 ordered the juvenile to pay;

103 (12) Order that the juvenile participate in programs empha-  
104 sizing self-reliance, such as intensive outdoor programs teaching  
105 survival skills, including but not limited to camping, hiking and  
106 other appropriate activities;

107 (13) Order that the juvenile participate in a program of academic  
108 or vocational educational or counseling, such as a youth service  
109 bureau, requiring attendance at sessions designed to afford access  
110 to opportunities for normal growth and development. This may  
111 require attendance after school, evenings and weekends;

112 (14) Place the juvenile in a suitable residential or nonresidential  
113 program for the treatment of alcohol or narcotic abuse, provided  
114 that the juvenile has been determined to be in need of such ser-  
115 vices; or

116 (15) Order the parents or guardian of the juvenile to participate  
117 in appropriate programs or services when the court has found  
118 either that such person's omission or conduct was a significant  
119 contributing factor towards the commission of the delinquent act,  
120 or, under its authority to enforce litigant's rights, that such per-  
121 son's omission or conduct has been a significant contributing factor  
122 towards the ineffective implementation of a court order previously  
123 entered in relation to the juvenile;

124 (16) (a) Place the juvenile in a nonresidential program operated  
125 by a public or private agency, providing intensive services to juve-  
126 niles for specified hours, which may include education, counselling  
127 to the juvenile and the juvenile's family if appropriate, vocational  
128 training, employment counselling, work or other services; or

129 (b) Place the juvenile under the custody of the Department of  
130 Corrections for placement with any private group home or private  
131 residential facility with which the department has entered into a  
132 purchase of service contract;

133 (17) Instead of or in addition to any disposition made according  
134 to this section, the court may postpone, suspend, or revoke for a  
135 period not to exceed 2 years the driver's license, registration cer-  
136 tificate, or both of any juvenile who used a motor vehicle in the  
137 course of committing an act for which he was adjudicated delin-  
138 quent. In imposing this disposition and in deciding the duration of  
139 the postponement, suspension, or revocation, the court shall con-  
140 sider the severity of the delinquent act and the potential effect of  
141 the loss of driving privileges on the juvenile's ability to be reha-  
142 bilitated. Any postponement, suspension, or revocation shall be  
143 imposed consecutively with any custodial commitment; or

144 (18) Order that the juvenile satisfy any other conditions reason-  
145 ably related to the rehabilitation of the juvenile.

146 c. (1) If the juvenile detention facility in the county in which  
147 the juvenile has been adjudicated delinquent has a juvenile deten-  
148 tion facility meeting the physical and program standards estab-  
149 lished pursuant to this subsection by the Department of Corrections,  
150 the court may, in addition to any of the dispositions enumerated  
151 in this subsection, incarcerate the juvenile in a youth detention  
152 facility for a term not to exceed 60 consecutive days. The Depart-  
153 ment of Corrections shall promulgate such rules and regulations  
154 from time to time as deemed necessary to establish minimum physi-  
155 cal facility and program standards for the use of juvenile detention  
156 facilities pursuant to this subsection.

157 (2) No juvenile may be incarcerated in any county detention  
158 facility unless the county has entered into an agreement with the  
159 Department of Corrections concerning the use of the facility for  
160 sentenced juveniles. Upon agreement with the county, the Depart-  
161 ment of Corrections shall certify detention facilities which may  
162 receive juveniles sentenced pursuant to this subsection and shall  
163 specify the capacity of the facility that may be made available to  
164 receive such juveniles; provided, however, that in no event shall  
165 the number of juveniles incarcerated pursuant to this subsection  
166 exceed 50% of the maximum capacity of the facility.

167 (3) The court may fix a term of incarceration under this sub-  
168 section where:

169 (a) The act for which the juvenile was adjudicated delin-  
170 quent, if committed by an adult, would have constituted a crime  
171 or repetitive disorderly persons offense;

172 (b) Incarceration of the juvenile is consistent with the re-  
173 habilitative goals of this act and the court is clearly convinced  
174 that the aggravating factors substantially outweigh the miti-  
175 gating factors as set forth in section 25 of this act; and

176 (c) The detention facility has been certified for admission  
177 of adjudicated juveniles pursuant to paragraph (2).

178 (4) If as a result of incarcerations of adjudicated juveniles pur-  
179 suant to this subsection, a county is required to transport a pre-  
180 disposition juvenile to a juvenile detention facility in another  
181 county, the costs of such transportation shall be borne by the  
182 Department of Corrections.

183 d. Whenever the court imposes a disposition upon an adjudicated  
184 delinquent which requires the juvenile to perform a community  
185 service, restitution, or to participate in any other program provided  
186 for in this section other than subsection c., the duration of the  
187 juvenile's mandatory participation in such alternative programs  
188 shall extend for a period consistent with the program goal for the  
189 juvenile and shall in no event exceed 1 year beyond the maximum  
190 duration permissible for the delinquent if he has been committed  
191 to a correctional institution.

1 25. Incarceration—Aggravating and mitigating factors. a.  
2 \***[Where the court is clearly convinced that the aggravating factors**  
3 **substantially outweigh the mitigating factors, as set forth in**  
4 **paragraphs (1) and (2) of this subsection, the court may fix a**  
5 **term of incarceration.]\***

6 (1) In determining whether incarceration is an appropriate dis-  
7 position, the court shall consider the following aggravating cir-  
8 cumstances:

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

12 (b) The fact that there was grave and serious harm inflicted  
13 on the victim and that based upon his age or mental capacity  
14 the juvenile knew or reasonably should have known that the  
15 victim was particularly vulnerable or incapable of resistance  
16 due to advanced age, disability, ill-health, or extreme youth,  
17 or was for any other reason substantially incapable;

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

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

22 (e) The fact that the juvenile committed the act pursuant  
23 to an agreement that he either pay or be paid for the commis-  
24 sion of the act and that the pecuniary incentive was beyond  
25 that inherent in the act itself;

26 (f) The fact that the juvenile committed the act against a  
27 policeman or other law enforcement officer, correctional em-

28 ployee or fireman, acting in the performance of his duties  
29 while in uniform or exhibiting evidence of his authority, or  
30 the juvenile committed the act because of the status of the  
31 victim as a public servant;

32 (g) The need for deterring the juvenile and others from  
33 violating the law;

34 (h) The fact that the juvenile knowingly conspired with  
35 others as an organizer, supervisor, or manager to commit  
36 continuing criminal activity in concert with two or more per-  
37 sons and the circumstances of the crime show that he has  
38 knowingly devoted himself to criminal activity as part of an  
39 ongoing business activity;

40 (i) The fact that the juvenile on two separate occasions  
41 was adjudged a delinquent on the basis of acts which if com-  
42 mitted by an adult would constitute crimes.

43 (2) In determining whether incarceration is an appropriate  
44 disposition the court shall consider the following mitigating  
45 circumstances:

46 (a) The child is under the age of 14;

47 (b) The juvenile's conduct neither caused nor threatened  
48 serious harm;

49 (c) The juvenile did not contemplate that his conduct would  
50 cause or threaten serious harm;

51 (d) The juvenile acted under a strong provocation;

52 (e) There were substantial grounds tending to excuse or  
53 justify the juvenile's conduct, though failing to establish a  
54 defense;

55 (f) The victim of the juvenile's conduct induced or facili-  
56 tated its commission;

57 (g) The juvenile has compensated or will compensate the  
58 victim for the damage or injury that the victim has sustained,  
59 or will participate in a program of community service;

60 (h) The juvenile has no history of prior delinquency or  
61 criminal activity or has led a law-abiding life for a substantial  
62 period of time before the commission of the present act;

63 (i) The juvenile's conduct was the result of circumstances  
64 unlikely to recur;

65 (j) The character and attitude of the juvenile indicate that  
66 he is unlikely to commit another delinquent or criminal act;

67 (k) The juvenile is particularly likely to respond affirma-  
68 tively to noncustodial treatment;

69 (l) The separation of the juvenile from his family by incar-  
70 ceration of the juvenile would entail excessive hardship to  
71 himself or his family;

72 (m) The willingness of the juvenile to cooperate with law  
73 enforcement authorities;

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

76 b. (1) There shall be a presumption of nonincarceration for any  
77 crime or offense of the fourth degree or less committed by a  
78 juvenile who has not previously been adjudicated delinquent or con-  
79 victed of a crime or offense.

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

82 c. The following juveniles shall not be committed to a State  
83 correctional facility:

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

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

90 d. (1) When the court determines that, based on the considera-  
91 tion of all the factors set forth in subsection a., the juvenile shall  
92 be incarcerated, unless it orders the incarceration pursuant to  
93 subsection c. of section 24 of this act, it shall state on the record  
94 the reasons for imposing incarceration, including any findings with  
95 regard to these factors, and commit the juvenile to a suitable in-  
96 stitution maintained by the Department of Corrections for the  
97 rehabilitation of delinquents pursuant to the conditions set forth  
98 in this subsection and for terms not to exceed the maximum terms  
99 as provided herein for what would constitute the following crimes  
100 if committed by an adult:

- |     |   |          |
|-----|---|----------|
| 101 | (a) Murder under N. J. S. 2C:11-3a(1) or (2) . . .    | 20 years |
| 102 | (b) Murder under N. J. S. 2C:11-3a(3) . . . . .       | 10 years |
| 103 | (c) Crimes of the first degree, except murder . . . . | 4 years  |
| 104 | (d) Crime of the second degree . . . . .              | 3 years  |
| 105 | (e) Crime of the third degree . . . . .               | 2 years  |
| 106 | (f) Crime of the fourth degree . . . . .              | 1 year   |
| 107 | (g) Disorderly persons offense . . . . .              | 6 months |

108 (2) The period of confinement shall continue until the appro-  
109 priate paroling authority determines that such a person should  
110 be paroled; except that in no case shall the period of confinement  
111 and parole exceed the maximum provided by law for such offense.  
112 However, if a juvenile is approved for parole prior to serving  
113 one-third of any term imposed for any crime of the first, second  
114 or third degree, including any extended term imposed pursuant to  
115 paragraph (3) or (4) of this subsection, or one-fourth of any term

116 imposed for any other crime the granting of parole shall be subject  
117 to approval of the sentencing court. *\*Prior to approving parole, the*  
118 *court shall give the prosecuting attorney notice and an opportunity*  
119 *to be heard.\** If the court denies the parole of a juvenile pursuant to  
120 this paragraph it shall state its reasons in writing and notify the  
121 parole board, the juvenile\***[,]**\* *\*and\** the juvenile's attorney \***[and**  
122 **the prosecuting attorney]**\*. The court shall have 30 days from the  
123 date of notice of the pending parole to exercise the power granted  
124 under this paragraph . If the court does not respond within that  
124A time period, the parole will be deemed approved.

125 Any juvenile committed under this act who is released on parole  
126 prior to the expiration of his maximum term may be retained  
127 under parole supervision for a period not exceeding the unserved  
128 portion of the term. The Parole Board, the juvenile, his attorney,  
129 his parent or guardian or, with leave of the court any other in-  
130 terested party, may make a motion to the court, with notice to the  
131 prosecuting attorney, for the return of the child from a correctional  
132 institution prior to his parole and provide for an alternative  
133 disposition which would not exceed the duration of the original  
134 time to be served in the institution. Nothing contained in this  
135 paragraph shall be construed to limit the authority of the Parole  
136 Board as set forth in N. J. S. 30:4-123.59.

137 (3) Upon application by the prosecutor, the court may sentence  
138 a juvenile who has been convicted of a crime of the first, second,  
139 or third degree if committed by an adult, to an extended term of  
140 incarceration beyond the maximum set forth in paragraph (1) of  
141 this subsection, if it finds that the juvenile was adjudged delin-  
142 quent on at least two separate occasions, for offenses which, if  
143 committed by an adult, would constitute a crime of the first or  
144 second degree, and was previously committed to an adult or juvenile  
145 State correctional facility. The extended term shall not exceed 5  
146 additional years for an act which would constitute murder and shall  
147 not exceed 2 additional years for all other crimes of the first degree  
148 or second degree, if committed by an adult, and 1 additional year  
149 for a crime of the third degree, if committed by an adult.

150 (4) Upon application by the prosecutor, when a juvenile is before  
151 the court at one time for disposition of three or more unrelated  
152 offenses which, if committed by an adult, would constitute crimes  
153 of the first, second or third degree and which are not part of the  
154 same transaction, the court may sentence the juvenile to an ex-  
155 tended term of incarceration not to exceed the maximum of the  
156 permissible term for the most serious offense for which the juvenile  
157 has been adjudicated plus 2 additional years.



1 26. Retention of jurisdiction. a. The court shall retain jurisdic-  
2 tion over any case in which it has entered a disposition under para-  
3 graph 7 of subsection b. of subsection c. of section 24 of this act or  
4 under section 25 of this act for the duration of that disposition of  
5 commitment or incarceration and may substitute any disposition  
6 otherwise available to it under section 24 other than incarceration.

7 b. Except as provided for in subsection a., the court shall retain  
8 jurisdiction over any case in which it has entered a disposition  
9 under section 24 of this act and may at any time for the duration  
10 of that disposition, if after hearing, and notice to the prosecuting  
11 attorney, it finds violation of the conditions of the order of disposi-  
12 tion, substitute any other disposition which it might have made  
13 originally.

14 c. The court may by its order retain jurisdiction in any other  
15 case.

1 27. Disposition of juvenile-family crisis. a. The court may order  
2 any disposition in a juvenile-family crisis provided for in para-  
3 graphs (2), (4), (5), (6), (7) and (13) of subsection b. of section  
4 24 of this act or other disposition specifically provided for in P. L.  
5 . . . . ., c. . . . . (now pending before the Legislature as Assem-  
6 bly Bill No. \***[645]**\* \*644\*).

7 b. No juvenile involved in a juvenile-family crisis shall be com-  
8 mitted to or placed in any institution or facility established for the  
9 care of delinquent children or in any facility, other than an institu-  
10 tion for the mentally retarded, a mental hospital or facility for the  
11 care of persons addicted to controlled dangerous substances, which  
12 physically restricts such juvenile committed to or placed in it.

1 28. Termination of orders of disposition. Any order of disposi-  
2 tion entered in a case under this act shall terminate when the  
3 juvenile who is the subject of the order attains the age of 18, or 1  
4 year from the date of the order whichever is later unless such order  
5 involves incarceration or is sooner terminated by its terms or by  
6 order of the court. Any agency providing services pursuant to any  
7 court ordered disposition shall give prior notice to the court at  
8 least 30 days before terminating these services which notice shall  
9 include the date of intended termination.

1 29. Effect of disposition. No disposition under this act shall  
2 operate to impose any of the civil disabilities ordinarily imposed  
3 by virtue of a criminal conviction, nor shall a juvenile be deemed  
4 a criminal by reason of such disposition.

5 The disposition of a case under this act shall not be admissible  
6 against the juvenile in any criminal or penal case or proceeding in  
7 any other court except for consideration in sentencing, or as other-  
8 wise provided by law.

1 30. Juvenile Delinquency Disposition Commission.

2 a. There is created a Juvenile Delinquency Disposition Commis-  
3 sion of 17 members consisting of two members of the Senate, no  
4 more than one of whom shall be of the same political party, ap-  
5 pointed by the President of the Senate; two members of the General  
6 Assembly, no more than one of whom shall be of the same political  
7 party, appointed by the Speaker of the General Assembly; the  
8 Chief Justice of the Supreme Court or his designee; the Attorney  
9 General or his designee; the Public Advocate or his designee; the  
10 chairman of the State Parole Board or his designee; the Com-  
11 missioner of the Department of Corrections or his designee; the  
12 Commissioner of the Department of Human Services or his  
13 designee; the President of the County Prosecutors Association of  
14 New Jersey, or his designee; the President of the New Jersey  
15 Association of Counties, or his designee; the President of the  
16 League of Municipalities, or his designee; the Commissioner of the  
17 Department of Health or his designee; and three public members  
18 to be appointed by the Governor. The legislative members shall  
19 serve for terms coextensive with their respective terms as a member  
20 of the House of the Legislature from which they are appointed and  
21 each public member shall serve for a term of 3 years. Members shall  
22 be eligible for reappointment to the commission, and vacancies in  
23 the commission shall be filled in the same manner as the original  
24 appointment, but for the unexpired term only. The members of the  
25 commission shall serve without compensation, but shall be reim-  
26 bursed for necessary expenses actually incurred in the performance  
27 of their duties under this act. The commission shall choose a chair-  
28 man from among its members and appoint a secretary who need not  
29 be a member of the commission.

30 b. It shall be the duty of the commission to study and review all  
31 aspects of the juvenile justice system relating to the disposition of  
32 persons adjudged delinquent as provided in section 24 and section  
33 25 of this act. The commission shall compile, on a county by county  
34 basis, the individual case data on the age, sex and race of juveniles  
35 receiving dispositions, the availability and interrelationship of  
36 dispositions between the Department of Corrections and the  
37 Department of Human Services and the reasons for the utilization  
38 of the various dispositions and incarceration as a disposition pur-  
39 suant to procedures established by the Administrative Office of the  
40 Courts and report its findings to the Governor and Legislature 18  
41 months from the effective date of this act. This information should  
42 be reviewed with the objective of developing, where appropriate,  
43 guidelines as to the disposition of juveniles adjudicated delinquent.

44 c. The commission shall be entitled to call to its assistance and  
 45 avail itself of the services of such employees of the State and the  
 46 political subdivisions thereof as it may require and as may be  
 47 available to it for said purpose, and to employ such professional,  
 48 stenographic, and clerical assistants and incur such traveling and  
 49 other miscellaneous expenses as it may deem necessary in order  
 50 to perform its duties, and as may be within the limits of funds  
 51 appropriated or otherwise made available to it for said purposes.

52 d. After its first report, the commission shall file annually with  
 53 the Governor and the Legislature a report containing its findings  
 54 and recommendations concerning the disposition of juvenile  
 55 offenders. Additionally, the commission shall report to the  
 56 Governor and the Legislature on the operation of subsection c. of  
 57 section 24 of this act 24 months from the effective date of this act.

1 31. N. J. S. 2A:4-41 is amended to read as follows:

2 2A:4-41. *Except as otherwise provided by law, all [All] expenses*  
 3 *incurred in complying with the provisions of this chapter shall be a*  
 4 *county charge.*

1 32. N. J. S. 2C:4-11 is amended to read as follows:

2 2C:4-11. *Immaturity Excluding Criminal Conviction; Transfer*  
 3 *of Proceedings to [Juvenile] Family Court.*

4 a. A person shall not be tried for or convicted of an offense if:

5 (1) At the time of the conduct charged to constitute the offense  
 6 he was less than 14 years of age, in which case the [juvenile and  
 7 domestic relations court] family court shall have exclusive jurisdic-  
 8 tion *unless pursuant to section 8 of the "New Jersey Code of*  
 9 *Criminal Justice" the juvenile has demanded indictment and trial*  
 10 *by jury; or*

11 (2) At the time of the conduct charged to constitute the offense  
 12 he was 14, 15, 16 or 17 years of age, unless:

13 (a) The [juvenile and domestic relations] family court has no  
 14 jurisdiction over him;

15 (b) The [juvenile and domestic relations] family court has,  
 16 pursuant to [P. L. 1973, c. 306, s. 7 (C. 2A:4-48)], *section 7 of "New*  
 17 *Jersey Code of Criminal Justice"* entered an order waiving jurisdic-  
 18 tion and referring the case to the county prosecutor for the institu-  
 19 tion of criminal proceedings against him;

20 (c) The juvenile has, pursuant to [P. L. 1973, c. 306, s. 8 (C.  
 21 2A:4-49)], *section 8 of the "New Jersey Code of Criminal Justice"*  
 22 *demanded indictment and trial by jury.*

23 b. No court shall have jurisdiction to try and convict a person of  
 24 an offense if criminal proceedings against him are barred by sub-  
 25 section a. of this section. When it appears that a person charged

26 with the commission of an offense may be of such an age that  
 27 proceedings may be barred under subsection a. of this section, the  
 28 court shall hold a hearing thereon, and the burden shall be on [the  
 29 prosecution] *such person* to establish to the satisfaction of the  
 30 court that the proceeding is [not] barred upon such grounds. If the  
 31 court determines that the proceeding is barred, custody of the  
 32 person charged shall be surrendered to the [juvenile and domestic  
 33 relations] *family court* and the case, including all papers and  
 34 processes relating thereto shall be transferred.

1 33. Repealer. All acts and parts of acts inconsistent with this  
 2 act are superseded and repealed, and without limiting the general  
 3 effect of this act in superseding and repealing acts so inconsistent  
 4 herewith, the following sections, acts and parts of acts, together  
 5 with all amendments and supplements thereto, are specifically  
 6 repealed:

7 New Jersey Statutes sections:

8 2A:4-1 to 2A:4-4 both inclusive;

9 \*~~2A:4-5 to~~ 2A:4-7 \*~~both inclusive~~\*;

10 2A:4-8 and 2A:4-9;

11 2A:4-12 and 2A:4-13;

12 2A:4-18 and 2A:4-19;

13 2A:4-31;

14 2A:4-34;

15 2A:4-36;

16 2A:4-38;

17 2A:4-40;

18 Pamphlet Laws:

19 Laws of 1970, c. 155\*, s. 2\* (C. 2A:4-4a);

20 Laws of 1955, c. 26 \*s. 2 and s. 3\* (C. 2A:4-4.1 and C. 2A:4-4.2);

21 \*~~Laws of 1958, c. 129 (C. 2A:4-4.3);~~

22 Laws of 1968, c. 440 (C. 2A:4-4a. and C. 2A:4-4b.);

23 Laws of 1964, c. 97 (C. 2A:4-4.4);

24 Laws of 1964, c. 122 (C. 2A:4-4.5 and C. 2A:4-4.6);

25 Laws of 1965, c. 74 (C. 2A:4-4.7);

26 Laws of 1971, c. 467 (C. 2A:4-4.9);

27 Laws of 1976, c. 70 (C. 2A:4-4.10);

28 Laws of 1978, c. 149 (C. 2A:4-4.11);~~]~~\*

29 Laws of 1969, c. 55 (C. 2A:4-7.1 to C. 2A:4-7.3 both inclusive);

30 Laws of 1971, c. 44 (C. 2A:4-7.4);

31 Laws of 1964, c. 152 (C. 2A:4-13.1);

32 Laws of 1968, c. 202 (C. 2A:4-19.1);

33 Laws of 1973, c. 306 (C. 2A:4-42 to C. 2A:4-67 both inclusive).

1    \*~~[35.]~~\* \*34.\* This act shall take effect on September 1, 1983 but  
2 shall remain inoperative unless and until the following bills now  
3 pending before the Legislature as Assembly Bill No. 642, Assembly  
4 Bill No. 643, Assembly Bill No. 644, and Assembly Bill No. 645 are  
5 enacted into law; provided, however, that \*~~[~~paragraph 18 of sub-  
6 section b.~~]~~\* \*subsection c.\* of section 24 of this act shall expire 48  
7 months following the effective date of this act.

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- 974.90 New Jersey. Juvenile Justice Task Force. Advisory Committee on  
J97 Pre-Trial Practices.  
1981e Final report...January, 1981. Trenton, 1981.
- 974.90 New Jersey. Juvenile Justice Task Force. Advisory Committee on  
J97 "Determinate/Indeterminate Sentencing"  
1981c Final report...January, 1981. Trenton, 1981.
- 974.90 New Jersey. Juvenile Justice Task Force. Advisory Committee on  
J97 "Alternative Dispositions/Community-based Programs."  
1981 Final report...January, 1981. Trenton, 1981.
- 974.90 New Jersey. County Prosecutors Association.  
J97 A legislative proposal for juvenile justice. Trenton,  
1980b 1980.
- 974.90 New Jersey. Legislature. General Assembly. Judiciary, Law  
J97 Public Safety and Defense Committee. Subcommittee on Juvenile Justice.  
1980 Report...May 8, 1980. Trenton, 1980.

Parts 1,2,3

- 974.90 New Jersey. Legislature. General Assembly. Judiciary, Law  
J97 Public Safety and Defense Committee. Subcommittee on Juvenile Justice.  
1979c Report and recommendations on juvenile violence, vandalism,  
parental responsibility and the juvenile justice system.  
November 8, 1979. Trenton, 1979.
- 974.90 New Jersey. Legislature. General Assembly. Judiciary Committee.  
J97 Subcommittee on Juvenile Justice.  
1979 Public hearing...held 7-31-79, 8-13-79, 8-28-79, Middletown,  
West Deptford and Jersey City, 1979.
- 974.90 New Jersey. Administrative Office of the Courts.  
J97 Guide for juvenile conference committees appointed  
1978 by the juvenile and domestic relations courts... July,  
1978. Trenton, 1978.
- 974.901 New Jersey Juvenile Delinquency Disposition Commission.  
C35.7 The impact of the New Jersey Juvenile Justice Code...  
First annual report, September 19, 1986. Trenton, 1986.
- New Jersey. Supreme Court Committee.  
Report...May 14, 1981. .  
(107 NJLJ 440)  
441
- New Jersey. Supreme Court. Family Division Liason Committee.  
Report...July 24, 1986.  
(118 NJLJ 85)
- New Jersey. Supreme Court. Committee on Family Division Practice.  
Report...July 25, 1985.  
(116 NJLJ 147)

See also newspaper clipping file "New Jersey-Juvenile courts-1981 and 1982" in New Jersey Reference Department.

Note: Public hearing, referred to in 1986 Supreme Court Committee report--not a public document

## SPONSOR'S STATEMENT

This bill amends and supplements the various laws regarding juveniles. The bill is part of a package of legislation intended to revise the juvenile justice system.

This bill recognizes that the public welfare and the best interests of juveniles can be served most effectively through an approach which provides for harsher penalties for juveniles who commit serious acts or who are repetitive offenders, while broadening family responsibility and the use of alternative dispositions for juveniles committing less serious offenses. Moreover, the provisions of this bill and the other accompanying bills reflect a philosophy which is pragmatic and realistic in nature rather than bound to any particular ideology.

In amending and reallocating most of the present statutory sections concerning juvenile proceedings and jurisdiction, this bill embodies a new code of juvenile justice. In addition to rearranging many of the present statutory sections, some of which have been reinstated in full, the bill adds some sections which are completely new.

The following highlights the major provisions of the bill:

Section 1 cites the short title of this act as the "New Jersey Code of Juvenile Justice."

Section 2 states general purposes of the act. The language in this section combines the purpose sections in the current juvenile statutes and stresses such concepts as the preservation of the family unit and the rehabilitation of juveniles consistent with the protection of the public.

Section 3 is the definitional section. Most importantly section 3 adds a definition of "juvenile-family crisis." This definition sets forth those situations (i.e. chronic truancy or a serious conflict between child and parent) in which the conduct or behavior of the juvenile or his family is a problem which merits response, although no delinquent act has been committed. This crisis will be addressed through an intervention process established in accompanying legislation. The definition provides that the condition of the juvenile's family life and not just the act of the juvenile is determinative as to whether a crisis exists. This definition would encompass many situations which are presently defined as "Juvenile in Need of Supervision." Although it is not intended to necessarily broaden those circumstances permitting court intervention.

Section 3 also defines the term "repetitive disorderly persons offense" as meaning the second or more disorderly persons offense committed by a juvenile on at least two separate occasions and at different times.

Section 4 restates the present statutory definition of juvenile delinquency.

Section 5 sets forth the jurisdiction of the county family court. Most notably, the bill extends the jurisdiction of the court in matters of delinquency and juvenile-family crisis to the juvenile's parent, guardian and other family members contributing to a juvenile-family crisis. This jurisdiction is the gravamen of effective family participation and responsibility in juvenile matters.

Section 6 provides that unless jurisdiction is waived, a juvenile charged with a crime, offense or violation shall be transferred from any other court to the county family court having jurisdiction.

Section 7 concerns the waiver of jurisdiction over a juvenile from the county family court to the appropriate adult court. It significantly revises the present waiver statute. Specifically, in order to be eligible to be waived, the juvenile must be 14 years or older at the time of the charged delinquent act and it must be established that there is probable cause that he committed a delinquent act of the nature enumerated in this section. Those acts include crimes such as criminal homicide, robbery, arson, sexual assault, possession of a firearm, and serious drug offenses. Once this is established, the State must show by a preponderance of the evidence that the nature and circumstances of the charge or the juvenile's prior record is of such a serious character that the interests of the public require waiver. However, if the juvenile can show by a preponderance of the evidence that he can be rehabilitated as a juvenile prior to reaching the age of 19 and the court is satisfied by a weighing of all of the evidence that the reasons for the waiver are substantially outweighed by the juvenile's probability for rehabilitation, waiver shall not be granted. There is also a provision that the prosecutor seeking waiver must file the basis for his motion in a reasonable time after filing of the motion. The court deciding a waiver motion shall state on the record the reasons for its decision. The Attorney General is to compile information concerning waiver in order to develop guidelines as to those situations and factors which might compel or mitigate against the waiver. In addition, the requirement that this information be on record serves to underscore the intention that this section not be either capricious or applied in a pro forma manner, but rather, that waiver be considered in each individual case in a thoughtful and extensive manner. Moreover, this section is intended to provide a more reserved and realistic procedure for waiver and does not signify a policy of wholesale waiver of juveniles to adult court.

Section 8 allows juveniles over 14 and those juveniles under 14



charged with murder to elect to transfer delinquency matters to adult court.

Section 9 states that a case when transferred from the juvenile court shall be processed in the adult court as if instituted in the adult court.

Section 10 provides that testimony from the waiver hearing not be admissible to determine guilt or delinquency in any other hearings.

Section 11 concerns the filing of complaints, including the filing of petitions for family crisis matters. Complaints and petitions are to be in the form prescribed by the Rules of Court. Any person with knowledge of the facts may file a delinquency petition. Juvenile-family crisis petitions must be signed by court intake services.

Section 12 sets forth under what conditions a juvenile may be taken into custody. Those conditions include commission of an act of delinquency and pursuant to a warrant or court order. Section 12 also adds the concept of short-term custody which may occur when a law enforcement officer has reasonable grounds to believe (1) that the health and safety of the juvenile is seriously in danger, or (2) that the juvenile has left the home and care of his parents without consent, or (3) that the juvenile has run away from out of home placement. The taking of a juvenile into custody is not deemed an arrest.

Section 13 provides for the conditions of the short-term custody. A juvenile cannot be held for more than 6 hours. Where possible, the juvenile is to be transported to his home or to the home of another responsible adult. The concept of limited custody is intended to serve as protection of the juvenile.

Section 14 provides for notice to the parents or guardian of the juvenile when he is taken into custody.

Section 15 sets forth the detailed criteria for placing a juvenile into detention. A juvenile may be placed into detention only where:

(1) Detention is necessary to secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent willful failure to appear at such proceedings or based on information that there is a likelihood that the juvenile will not appear at the next court proceeding, or

(2) The physical safety of the community would be seriously threatened if the juvenile were not detained and the juvenile is charged with an offense which, if committed by an adult would constitute a crime, or would constitute a repetitive disorderly persons offense, provided that the judge determines that there is a likelihood that custodial disposition would eventually be ordered.

Except where these factors necessitate a contrary result, the bill takes the position that release under certain prescribed circumstances or the imposition of restrictions on the juvenile is the preferred course of action. The reasons for placing a juvenile in detention is to be stated on the record by the court. No juvenile 11 years of age or under could be placed in detention unless he is charged with a crime of the first or second degree or arson.

The fact that the juvenile failed to remain where placed by the court or by the intake service is a factor warranting detention.

Section 16 provides for release of a juvenile on his own recognizance. This type of release is not provided for currently and was created for those situations where the parent of the juvenile 14 or older cannot be found yet there is reasonable belief that he will return to home or school safely and appear at his hearing.

Section 17 states that there shall be a hearing before the court waiving jurisdiction to decide where a juvenile transferred to an adult court should be detained. The juvenile court is deemed in the best position to determine the best interests of the juvenile who is being placed.

Section 18 concerns procedures affecting detention and shelter care facilities. The Department of Corrections shall specify the place where a juvenile may be detained and the Department of Human Services shall specify where a juvenile may be placed in shelter. In addition, section 18 provides for population standards for detention and shelter-care facilities and establishes a mechanism whereby counties whose facilities are overcrowded can, on a cost reimbursement basis, transport juveniles to facilities in other counties. The maximum population of detention or shelter care facilities is to be determined after consultation with the counties. The cost reimbursements from county to county are to reflect actual county expenditures in maintaining a juvenile, including direct and indirect costs.

Section 19 establishes time frames and notice requirements for detention and adjudicatory hearings. It also establishes the time schedule for probable cause determinations. This section attempts to balance the realistic time constraints present in any litigated matter with the need for a deliberate process which is especially important where the juvenile is detained.

Section 20 gives a juvenile the right to be represented by counsel at every critical stage in the proceeding which, in the opinion of the court, may result in the institutional commitment of the juvenile. In addition, during every court proceeding in a delinquency case, the waiving of any right afforded to a juvenile shall be done after

consultation with his counsel. All waivers must be in writing in the language regularly spoken by the juvenile.

Section 21 provides that the juvenile accused of delinquency shall have available to him the same defenses as an adult charged with a crime. It also provides that juveniles shall enjoy with certain exceptions the constitutional rights applicable to criminal defendants. It is not intended, however, to abolish existing limitations on those rights. For example, that a parent has the capacity to consent to a search of his child's property, which is rooted in consideration of the authority and responsibility of parents and those acting in their place.

Section 22 provides the time frames for a disposition hearing after a juvenile has been adjudged a delinquent. The bill recognizes that those juveniles in detention should be given the swiftest disposition practicable. Disposition is to be made in 30 days in those cases and 60 days in all others unless an extension is granted for good cause shown.

Section 23 allows the court to refer the juvenile to a predispositional evaluation prior to a disposition. This evaluation would not necessarily extend the time period for disposition unless deemed good cause.

Section 24 establishes criteria for the court to weigh in determining the appropriate disposition for a juvenile. The criteria to be considered by the court includes the nature and circumstances of the offense, the juvenile's record and the degree of injury to persons or damage to property caused by the offense.

Section 24 also significantly broadens the dispositions available to the courts by adding numerous alternative dispositions beyond what is presently available. Those dispositions include fines, restitution, probation, community service, transfer of custody, placement with the Department of Human Services and vocational training. The court may also order the parents of the juvenile to participate in the disposition.

A factor which the court must consider in determining the appropriate disposition would be the academic and social needs of juveniles with disabilities. The parents or guardian of a juvenile may be ordered to participate in appropriate programs where the court has found that such person's conduct or omission either was a significant factor towards the commission of the delinquent act or was a significant factor towards the ineffective implementation of a previous court order concerning the juvenile. A juvenile may be placed in a private group home or residential facility pursuant to a purchase of service contract with the Department of Correc-

tions. In addition, a recently-enacted disposition permitting a license suspension for juveniles who commit a delinquent act with use of a motor vehicle is included.

Finally, this section provides for a short term incarceration disposition. The purpose of this provision is to permit an alternative disposition, apart from the standard term of incarceration, which would provide a strong deterrent for youths who have been adjudicated for certain serious offenses. Provision is thus made for a term of incarceration not to exceed 60 days. This disposition is permissible in those juvenile detention facilities located in counties which have met the physical and program standards established by the Department of Corrections. An agreement to this effect would have to be reached by the Department and county prior to the receiving of juveniles on this basis. Incarceration in a juvenile detention facility would be permitted where the number of juveniles presently incarcerated under this disposition in that facility does not exceed 50% of the maximum capacity. This would effectively place a limit on the use of this disposition in many counties. This disposition is intended to rehabilitate juveniles by instilling in them the understanding that serious consequences may attach to their acts. Because of its novelty, the operation of this provision will be specifically reviewed 24 months after the effective date of this act and will expire unless reenacted 48 months after the effective date. The cost of transporting a juvenile who is being detained prior to adjudication as a result of any overcrowding caused by this section would be borne by the Department of Corrections.

Section 25 provides for terms of incarceration for delinquent acts. Specifically, this bill establishes aggravating and mitigating circumstances for the court to consider in determining whether or not to incarcerate a juvenile.

Among the circumstances to be considered are whether the act was committed in a cruel and heinous manner; the seriousness of harm inflicted on the victim, the character and attitudes of the juvenile, the juvenile's age and prior record, and the need for deterring other juveniles. If the aggravating circumstances substantially outweigh the mitigating, then incarceration may be imposed.

This section also provides for presumption of imprisonment for certain serious crimes, such as criminal homicide, robbery, sexual assault and kidnapping, among others. Practically, this presumption may encourage less dependency on waiver of a juvenile to adult court, because of some assurance that the juvenile committing

a serious crime would possibly receive a more appropriate disposition in the juvenile system.

In addition, this section provides for a presumption of nonincarceration for juveniles who have committed crimes of the fourth degree or less who have no prior record. Juveniles age 11 or under cannot be incarcerated in a State correctional facility unless adjudicated delinquent of certain serious crimes. Certain developmentally disabled juveniles may not be incarcerated. Maximum terms of incarceration for various degrees of offenses are established with a provision for an extended term beyond such maximums for juveniles who commit first or second or third degree crimes and who are repetitive offenders who have previously been incarcerated. An extended term not to exceed 2 years beyond the maximum may also be imposed when a juvenile is before the court at one time for disposition of three or more unrelated offenses which would constitute crimes of the first, second or third degree.

The maximum terms follow:

- |   |           |
|---|-----------|
| (a) Murder under 2C:11-3a(1) or (2)           | 20 years  |
| (b) Murder under 2C:11-3a(3)                  | 10 years  |
| (c) Crimes of the first degree, except murder | 4 years   |
| (d) Crime of the second degree                | 3 years   |
| (e) Crime of the third degree                 | 2 years   |
| (f) Crime of the fourth degree                | 1 year    |
| (g) Disorderly persons offense                | 6 months. |

When incarcerating a juvenile, the court must state on the record its reasons. The purpose is to promote where possible uniformity of sentencing term and rationale for similar delinquent acts throughout the State.

In addition, if a juvenile is approved for parole prior to serving one-third of any term for any crime of the first, second or third degree, including an extended term of one-fourth of a term for any other crime, the parole shall be subject to approval of the sentencing court.

If the judge does not act on a pending parole in 30 days, then parole would be deemed approved.

Section 26 sets forth the authority of the court to retain jurisdiction over a delinquency matter for the duration of the disposition. Although a court by its order may retain jurisdiction over any matter, this section specifically permits the court to retain jurisdiction in all cases where a commitment or incarceration is the disposition, so that at a later point the court may substitute other disposition. In addition, where a disposition other than incarceration or commitment is made and a violation of the conditions

of that disposition occur, the court may substitute any other disposition originally available to it.

Section 27 sets forth those specific dispositions to the court in juvenile-family crisis matters. Those dispositions include transfer or custody, placement with Human Services, vocational training and parental participation. No incarceration would be allowed as a disposition.

Section 28 provides that any order of disposition entered in a case shall terminate when the juvenile who is the subject of the order attains the age of 18 or 1 year from the date of the order whichever is later unless the order involves incarceration or is sooner terminated by its terms. Any agency providing services pursuant to a court ordered disposition shall give 30 days prior notice before terminating these services.

Section 29 provides that a disposition under this bill shall not operate to impose any of the civil disabilities ordinarily imposed by virtue of a criminal conviction, nor shall a juvenile be considered a criminal by reason of such disposition.

Section 30, as amended, creates the juvenile disposition committee consisting of 17 members which shall have the duty to review all aspects of the juvenile justice system relating to dispositions, and which shall also have the objective to develop and suggest, where appropriate, uniform guidelines. Members of the Legislature, the Chief Justice, the Attorney General, the Public Advocate, the Parole Board, Corrections, Human Services, the Commissioner of Health, a county and municipal representative and three more of the public members form the committee. The first report shall be due 18 months after the effective date of this act and annually thereafter.

Section 32 amends 2A:4-41 to recognize the abolition of the Juvenile and Domestic Relations Courts. The matters previously heard by this court will now be heard by the family court as provided for in accompanying legislation. All costs previously borne by counties in juvenile matters shall remain county expenses except that the salary of judges of this court, which will be the responsibility of the State.

Section 32 amends 2C:4-11 to place the burden on the person charged in criminal proceedings to show that he is under the age of 18 years instead of the prosecution.

Section 33 is the repealer section.

Section 34 provides for an effective date of September 1, 1983 as well as tying the several other accompanying bills into one legislative package.

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 641

**STATE OF NEW JERSEY**

DATED: FEBRUARY 8, 1982

This bill amends and supplements the various laws regarding juveniles. The bill is part of a package of legislation intended to revise the justice system.

This bill recognizes that the public welfare and the best interests of juveniles can be served most effectively through an approach which provides for harsher penalties for juveniles who commit serious acts or who are repetitive offenders, while broadening family responsibility and the use of alternative dispositions for juveniles committing less serious offenses. Moreover, the provisions of this bill and the other accompanying bills reflect a philosophy which is pragmatic and realistic in nature rather than bound to any particular ideology.

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The following highlights the major provisions of the bill:

Section 1 cites the short title of this act as the "New Jersey Code of Juvenile Justice."

Section 2 states general purposes of the act. The language in this section combines the purpose sections in the current juvenile statutes and stresses such concepts as the preservation of the family unit and the rehabilitation of juveniles consistent with the protection of the public.

Section 3 is the definitional section. Most importantly section 3 adds a definition of "juvenile-family crisis." This definition sets forth those situations (i.e. chronic truancy or a serious conflict between child and parent) in which the conduct or behavior of the juvenile or his family is a problem which merits response, although no delinquent act has been committed. This crisis will be addressed through an intervention process established in accompanying legislation. The definition provides that the condition of the juvenile's family life and not just the act of the juvenile is determinative as to whether a crisis exists. This definition

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Section 7 concerns the waiver of jurisdiction over a juvenile from the family court to the appropriate adult court. It significantly revises the present waiver statute. Specifically, in order to be eligible to be waived, the juvenile must be 14 years or older at the time of the charged delinquent act and it must be established that there is probable cause that he committed a delinquent act of the nature enumerated in this section. Those acts include crimes such as criminal homicide, robbery, arson, sexual assault, possession of a firearm, and serious drug offenses. Also any delinquent act committed by a juvenile who had previously been adjudicated delinquent on the basis of a serious offense; any delinquent act committed by a juvenile who had been previously incarcerated and any delinquent act committed against a person in a violent manner is eligible for waiver.

As amended by the committee, once it is established by the prosecution that the alleged delinquent act would constitute a serious offense such as homicide, robbery or arson, no additional showing is required in order for waiver to occur. With regard to other delinquent acts eligible for waiver, the prosecution must show that the nature and circumstance of the charge or the prior record of the juvenile are sufficiently serious that the interests of the public require waiver. However, if the juvenile can show that the probability that he can be rehabilitated as a juvenile prior to reaching the age of 19 substantially outweighs the reasons for the waiver, the waiver shall not be granted. There is also a provision that the prosecutor seeking waiver must file the basis for his motion in a reasonable time after filing of the motion. The court deciding a waiver motion shall state on the record the



reasons for its decision. The Attorney General is to compile information concerning waiver in order to develop guidelines as to those situations and factors which might compel or mitigate against the waiver. In addition, the requirement that this information be on record serves to underscore the intention that this section not be either capricious or applied in a pro forma manner, but rather, that waiver be considered in each individual case in a thoughtful and extensive manner. Moreover, this section is intended to provide a more reserved and realistic procedure for waiver and does not signify a policy of wholesale waiver of juveniles to adult court.

Section 8 allows juveniles over 14 and those juveniles under 14 charged with murder to elect to transfer delinquency matters to adult court.

Section 9 states that a case when transferred from the juvenile court shall be processed in the adult court as if instituted in the adult court.

Section 10 provides that testimony from the waiver hearing not be admissible to determine guilt or delinquency in any other hearings.

Section 11 concerns the filing of complaints, including the filing of petitions for family crisis matters. Complaints and petitions are to be in the form prescribed by the Rules of Court. Any person with knowledge of the facts may file a delinquency petition. Juvenile-family crisis petitions must be signed by court intake services.

Section 12 sets forth under what conditions a juvenile may be taken into custody. Those conditions include commission of an act of delinquency and pursuant to a warrant or court order. Section 12 also adds the concept of short-term custody which may occur when a law enforcement officer has reasonable grounds to believe (1) that the health and safety of the juvenile is seriously in danger, or (2) that the juvenile has left the home and care of his parents without consent, or (3) that the juvenile has run away from out of home placement. The taking of a juvenile into custody is not deemed an arrest.

Section 13 provides for the conditions of the short-term custody. A juvenile cannot be held for more than 6 hours. Where possible, the juvenile is to be transported to his home or to the home of another responsible adult. The concept of limited custody is intended to serve as protection of the juvenile.

Section 14 provides for notice to the parents or guardian of the juvenile when he is taken into custody.

Section 15 sets forth the detailed criteria for placing a juvenile into detention. A juvenile may be placed into detention only where:

(1) Detention is necessary to secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent willful failure to appear at such proceedings or based on information that

there is a likelihood that the juvenile will not appear at the next court proceeding, or

(2) The physical safety of the community would be seriously threatened if the juvenile were not detained and the juvenile is charged, with an offense which, if committed by an adult would constitute a crime, or would constitute a repetitive disorderly persons offense, provided that the judge determines that there is a likelihood that custodial disposition would eventually be ordered. Except where these factors necessitate a contrary result, the bill takes the position that release under certain prescribed circumstances or the imposition of restrictions on the juvenile is the preferred course of action. The reasons for placing a juvenile in detention is to be stated on the record by the court. No juvenile 11 years of age or under could be placed in detention unless he is charged with a crime of the first or second degree or arson.

The fact that the juvenile failed to remain where placed by the court or by the intake service is a factor warranting detention.

Section 16 provides for release of a juvenile on his own recognizance. This type of release is not provided for currently and was created for those situations where the parent of the juvenile 14 or older cannot be found yet there is reasonable belief that he will return to home or school safely and appear at his hearing.

Section 17 states that there shall be a hearing before the court waiving jurisdiction to decide where a juvenile transferred to an adult court should be detained. The juvenile court is deemed in the best position to determine the best interests of the juvenile who is being placed.

Section 18 concerns procedures affecting detention and shelter care facilities. The Department of Corrections shall specify the place where a juvenile may be detained and the Department of Human Services shall specify where a juvenile may be placed in shelter. In addition, section 18 provides for population standards for detention and shelter-care facilities and establishes a mechanism whereby counties whose facilities are overcrowded can, on a cost reimbursement basis, transport juveniles to facilities in other counties. The maximum population of detention or shelter care facilities is to be determined after consultation with the counties. The cost reimbursements from county to county are to reflect actual county expenditures in maintaining a juvenile, including direct and indirect costs.

Section 19 establishes time frames and notice requirements for detention and adjudicatory hearings. It also establishes the time schedule for probable cause determinations. This section attempts to balance the realistic time constraints present in any litigated matter with the need for a deliberate process which is especially important where the juvenile is detained.

Section 20 gives a juvenile the right to be represented by counsel at every critical stage in the proceeding which, in the opinion of the court, may result in the institutional commitment of the juvenile. In addition, during every court proceeding in a delinquency case, the waiving of any right afforded to a juvenile shall be done after consultation with his counsel. All waivers must be in writing in the language regularly spoken by the juvenile.

Section 21 provides that the juvenile accused of delinquency shall have available to him the same defenses as an adult charged with a crime. It also provides that juveniles shall enjoy with certain exceptions the constitutional rights applicable to criminal defendants. It is not intended, however, to abolish existing limitations on those rights. For example, that a parent has the capacity to consent to a search of his child's property, which is rooted in consideration of the authority and responsibility of parents and those acting in their place.

Section 22 provides the time frames for a disposition hearing after a juvenile has been adjudged a delinquent. The bill recognizes that those juveniles in detention should be given the swiftest disposition practicable. Disposition is to be made in 30 days in those cases and 60 days in all others unless an extension is granted for good cause shown.

Section 23 allows the court to refer the juvenile to a predispositional evaluation prior to a disposition. This evaluation would not necessarily extend the time period for disposition unless deemed good cause.

Section 24 establishes criteria for the court to weigh in determining the appropriate disposition for a juvenile. The criteria to be considered by the court includes the nature and circumstances of the offense, the juvenile's record and the degree of injury to persons or damage to property caused by the offense.

Section 24 also significantly broadens the dispositions available to the courts by adding numerous alternative dispositions beyond what is presently available. Those dispositions include fines, restitution, probation, community service, transfer of custody, placement with the Department of Human Services and vocational training. The court may also order the parents of the juvenile to participate in the disposition.

A factor which the court must consider in determining the appropriate disposition would be the academic and social needs of juveniles with disabilities. The parents or guardian of a juvenile may be ordered to participate in appropriate programs where the court has found that such person's conduct or omission either was a significant factor towards the commission of the delinquent act or was a significant factor towards the ineffective implementation of a previous court order concerning the juvenile. A juvenile may be placed in a private group home or resi-

dential facility pursuant to a purchase of service contract with the Department of Corrections. In addition, a recently-enacted disposition permitting a license suspension for juveniles who commit a delinquent act with use of a motor vehicle is included.

Finally, this section provides for a short term incarceration disposition. The purpose of this provision is to permit an alternative disposition, apart from the standard term of incarceration, which would provide a strong deterrent for youths who have been adjudicated for certain serious offenses. Provision is thus made for a term of incarceration not to exceed 60 days. This disposition is permissible in those juvenile detention facilities located in counties which have met the physical and program standards established by the Department of Corrections. An agreement to this effect would have to be reached by the Department and county prior to the receiving of juveniles on this basis. Incarceration in a juvenile detention facility would be permitted where the number of juveniles presently incarcerated under this disposition in that facility does not exceed 50% of the maximum capacity. This would effectively place a limit on the use of this disposition in many counties. This disposition is intended to rehabilitate juveniles by instilling in them the understanding that serious consequences may attach to their acts. Because of its novelty, the operation of this provision will be specifically reviewed 24 months after the effective date of this act and will expire unless reenacted 48 months after the effective date. The cost of transporting a juvenile who is being detained prior to adjudication as a result of any overcrowding caused by this section would be borne by the Department of Corrections.

Section 25 provides for terms of incarceration for delinquent acts. Specifically, this bill establishes aggravating and mitigating circumstances for the court to consider in determining whether or not to incarcerate a juvenile.

Among the circumstances to be considered are whether the act was committed in a cruel and heinous manner; the seriousness of harm inflicted on the victim, the character and attitudes of the juvenile, the juvenile's age and prior record, and the need for deterring other juveniles. By committee amendment, language which would have required the court to find that the aggravating circumstances substantially outweigh the mitigating circumstances in order for incarceration to be imposed was deleted.

This section also provides for presumption of imprisonment for certain serious crimes, such as criminal homicide, robbery, sexual assault and kidnapping, among others. Practically, this presumption may encourage less dependency on waiver of a juvenile to adult court, because of some assurance that the juvenile committing a serious crime would possibly receive a more appropriate disposition in the juvenile system.

In addition, this section provides for a presumption of nonincarceration for juveniles who have committed crimes of the fourth degree or less who have no prior record. Juveniles age 11 or under cannot be incarcerated in a State correctional facility unless adjudicated delinquent of certain serious crimes. Certain developmentally disabled juveniles may not be incarcerated. Maximum terms of incarceration for various degrees of offenses are established with a provision for an extended term beyond such maximums for juveniles who commit first or second or third degree crimes and who are repetitive offenders who have previously been incarcerated. An extended term not to exceed 2 years beyond the maximum may also be imposed when a juvenile is before the court at one time for disposition of three or more unrelated offenses which would constitute crimes of the first, second or third degree.

The maximum terms follow:

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|---|----------|
| (a) Murder under 2C:11-3a(1) or (2)           | 20 years |
| (b) Murder under 2C:11-3a(3)                  | 10 years |
| (c) Crimes of the first degree, except murder | 4 years  |
| (d) Crime of the second degree                | 3 years  |
| (e) Crime of the third degree                 | 2 years  |
| (f) Crime of the fourth degree                | 1 year   |
| (g) Disorderly persons offense                | 6 months |

When incarcerating a juvenile, the court must state on the record its reasons. The purpose is to promote where possible uniformity of sentencing term and rationale for similar delinquent acts throughout the State.

In addition, if a juvenile is approved for parole prior to serving one-third of any term for any crime of the first, second or third degree or one-fourth of a term for any crime of the fourth degree, the parole shall be subject to approval of the sentencing court. The committee added an amendment to this provision requiring the court to notify the prosecuting attorney prior to approving any parole under this section.

If the judge does not act on a pending parole in 30 days, then parole would be deemed approved.

Section 26 sets forth the authority of the court to retain jurisdiction over a delinquency matter for the duration of the disposition. Although a court by its order may retain jurisdiction over any matter, this section specifically permits the court to retain jurisdiction in all cases where a commitment or incarceration is the disposition, so that at a later point the court may substitute either disposition. In addition where a disposition other than incarceration or commitment is made and a violation of the conditions of that disposition occur, the court may substitute any other disposition originally available to it.

Section 27 sets forth those specific dispositions to the court in

juvenile-family crisis matters. Those dispositions include transfer or custody, placement with Human Services, vocational training and parental participation. No incarceration would be allowed as a disposition.

Section 28 provides that any order of disposition entered in a case shall terminate when the juvenile who is the subject of the order attains the age of 18 or 1 year from the date of the order whichever is later unless the order involves incarceration or is sooner terminated by its terms. Any agency providing services pursuant to a court ordered disposition shall give 30 days prior notice before terminating these services.

Section 29 provides that a disposition under this bill shall not operate to impose any of the civil disabilities ordinarily imposed by virtue of a criminal conviction, nor shall a juvenile be considered a criminal by reason of such disposition.

Section 30, as amended, creates the juvenile disposition committee consisting of 17 members which shall have the duty to review all aspects of the juvenile justice system relating to dispositions, and which shall also have the objective to develop and suggest, where appropriate, uniform guidelines. Members of the Legislature, the Chief Justice, the Attorney General, the Public Advocate, the Parole Board, Corrections, Human Services, the Commissioner of Health, a county and municipal representative and three more of the public members form the committee. The first report shall be due 18 months after the effective date of this act and annually thereafter.

Section 32 amends 2A:4-41 to recognize the abolition of the Juvenile and Domestic Relations Courts. The matters previously heard by this court will now be heard by the family court as provided for in accompanying legislation. All costs previously borne by counties in juvenile matters shall remain county expenses except that the salary of judges of this court, which will be the responsibility of the State.

Section 32 amends 2C:4-11 to place the burden on the person charged in criminal proceedings to show that he is under the age of 18 years instead of the prosecution.

Section 33 is the repealer section.

Section 34 provides for an effective date of September 1, 1983 as well as tying the several other accompanying bills into one legislative package.

Other than the amendments indicated in sections 7 and 25, the committee amendments are of a technical nature.

OFFICE OF THE GOVERNOR

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RELEASE: IMMEDIATE

CONTACT: CARL GOLDEN

FRIDAY, JULY 23, 1982

A comprehensive revision of New Jersey's juvenile justice laws, including a crackdown on crimes of violence and the creation of a Family Court to deal with juvenile matters was signed into law today by Governor Thomas H. Kean.

The five-bill package was signed by the Governor at a ceremony in the Assembly Chamber.

"This signing ceremony today culminates efforts of several years to upgrade, modernize and improve the manner in which the juvenile justice system functions in New Jersey," Kean said. "It recognizes very clearly the need to deal swiftly and sternly with violent young criminals and it tempers that recognition with the understanding that there are cases in which counseling and rehabilitation will be an adequate and appropriate response."

The five bills signed by the Governor are:

A-641, sponsored by Assemblyman Martin Herman (D-Gloucester) which permits judges to refer juveniles over the age of 14 years to trial as an adult when charged with a serious crime such as homicide, kidnapping, or sexual assault.

A-642, also sponsored by Herman, which establishes a Family Court in place of the Juvenile and Domestic Relations Court and extends its jurisdiction to the parents of the juvenile or other members of the family who might have contributed to the crisis.

A-643, sponsored by Assemblyman Walter M. D. Kern (R-Bergen) setting standards for the disclosure of juvenile identities and permits the fingerprinting of juveniles in certain cases.

A-644, sponsored by Assemblyman John Doyle (D-Ocean) to establish juvenile-family crisis intervention units in each county to assist juveniles and their families whose behavior creates a crisis situation.

A-645, sponsored by Assemblyman Eugene Thompson (D-Essex) which revises and standardizes in all counties the processing and handling of juvenile matters prior to involvement by the court, thus permitting some matters to be disposed of outside the courtroom.

"This program achieves a balance between the need for law-abiding society to be protected from the violent acts of young persons and the need for that same society to rehabilitate juveniles and turn them away from a career of crime," Kean said.

The Governor noted that he had been a long time advocate of the programs embodied in the package of bills.

"Crime --- and particularly violent crime --- is continually expressed by people as their major concern," Kean said. "The rapid and tragic upward surge in juvenile crime has been of deepening concern and demands that government deal with it.

"The package of bills I have signed today represents a most appropriate response to the problem and I am confident that New Jersey will make great strides in combating juvenile crime," Kean said.

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