



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

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MEMORANDUM

TO: All County Prosecutors

FROM: John J. Farmer, Jr., Attorney General *JJF*

SUBJECT: Attorney General Juvenile Waiver Guidelines

DATE: March 14, 2000

On January 14, 2000, P.L. 1999, C. 373 was signed by Governor Christine Todd Whitman, amending *N.J.S.A. 2A:4A-26*. *N.J.S.A. 2A:4A-26* provides for referral of a juvenile case to adult court without the juvenile's consent. This procedure is commonly known as involuntary waiver. P.L. 1999, C. 373 changes the procedure for waiver in certain designated cases.

The amendments contained in P.L. 1999, C. 373 become effective on March 14, 2000, 60 days after enactment. The most significant change contained in the amendments is the elimination of the opportunity for juveniles aged 16 and over, who are charged with the most serious offenses, to defeat a waiver motion by demonstrating that he or she can be rehabilitated, by the age of 19, by programs available in the juvenile justice system.

The amendment further provides:

The Attorney General shall develop for dissemination to the county prosecutors those guidelines or directives deemed necessary or appropriate to ensure the uniform application of this section throughout

the state. *N.J.S.A. 2A:4A-26f.*

The enclosed guidelines are promulgated in accordance with this legislative requirement.

- c. Paul H. Zoubek, First Assistant Attorney General, Director
Division of Criminal Justice
- AAG Debra L. Stone, Deputy Director, Operations,
Division of Criminal Justice
- AAG Ronald Susswein, Deputy Director, Policy
Division of Criminal Justice
- Dr. Bruce Stout, Executive Director,
Juvenile Justice Commission
- AAG Greta Gooden-Brown, Chief, Prosecutors & Police Bureau,
Division of Criminal Justice
- Assistant Prosecutor/Juvenile Unit Chiefs



Juvenile Waiver Guidelines

Department of Law & Public Safety
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Attorney General

Division of Criminal Justice
Paul H. Zoubek
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Division of Criminal Justice

Juvenile Waiver Guidelines

Introduction

On January 14, 2000, P.L. 1999, C. 373 was signed by Governor Christine Todd Whitman, amending *N.J.S.A. 2A:4A-26*. *N.J.S.A. 2A:4A-26* provides for referral of a juvenile case to adult court without the juvenile's consent. This procedure is commonly known as involuntary waiver. P.L. 1999, C. 373 changes the procedure for involuntary waiver in certain designated cases.

As a result of an involuntary waiver proceeding, the Family Court makes a determination to waive its exclusive jurisdiction over the juvenile, allowing the juvenile to be tried as an adult. Under the New Jersey Code of Criminal Justice, a juvenile may not be tried and convicted in Criminal Court unless the Family Court waives its jurisdiction over the matter. *N.J.S.A. 2C:4-11*.

The amendments contained in P.L. 1999, C. 373 become effective on March 14, 2000, 60 days after enactment. The most significant change contained in the amendments is the elimination of the opportunity for juveniles aged 16 and over, who are charged with the most serious offenses, to defeat a waiver motion by demonstrating to the Family Court that he or she can be rehabilitated, by the age of 19, by programs available in the juvenile justice system. The most serious offenses that are subject to waiver are referred to as the chart 1 offenses.

The amendment further provides:

The Attorney General shall develop for dissemination to the county prosecutors those guidelines or directives deemed necessary or appropriate to ensure the uniform application of this section throughout the state. *N.J.S.A. 2A:4A-26f*.

The guidelines contained herein are promulgated in accordance with this legislative requirement.

Legislative Intent

In 1983, the legislature created presumptive waiver for involuntary waiver of chart 1 offenses. In these cases, waiver is presumed because the prosecutor need not show that the nature and circumstances of the charge or the prior record of the juvenile are sufficiently serious that the interests of the public require waiver. *N.J.S.A. 2A:4A-26a(3)*. A discussion of the legislative intent that led to the creation of presumptive waiver for chart 1 offenses is contained in *State in the Interest of R.G.D.*, 108 N.J. 1, 7-12 (1987).

Prior to the enactment of *P.L. 1999, Ch. 373*, the legislature had already shifted the primary concern in presumptive waiver cases away from the system's ability to rehabilitate the juvenile to the need for general deterrence and public protection.¹ In fact, with the 1983 enactment of *N.J.S.A. 2A:4A-26*, the legislature shifted this balance so far that the Appellate Division has upheld the waiver of a juvenile charged with a serious offense even where the juvenile established that he had already been rehabilitated. The Appellate Division predicated its holding on the importance of general deterrence in protecting the public. *State in the Interest of B.G.*, 247 N.J. Super. 403 (App. Div. 1991).

The new amendments to *N.J.S.A. 2A:4A* have gone one step further by eliminating rehabilitation hearings for offenders, aged 16 and over, who are charged with the most serious offenses under the Act. In effect, this has created a group of offenders subject to "prosecutorial" waiver. For these offenders, the authority to make the waiver decision has been transferred from the judiciary to the county prosecutor. For this group of cases, the legislature intended to "ease[s] conditions for trial of certain juvenile offenders as adults." *Statement to Senate No. 286, 1999*.

For these cases, long delays, previously occasioned by rehabilitation hearings and the concomitant need to await expert reports, will be eliminated. Due to their

¹The first separate juvenile court in New Jersey was established in 1929. The primary goal of juvenile courts at that time was to rehabilitate the juvenile. Proceedings were informal and constitutional protections were absent. However, as the juvenile justice system has developed, offender accountability and public protection have become equally important goals. By 1983, with the enactment of our current Code of Juvenile Justice, the legislature provided for: "...harsher penalties for juveniles who commit serious acts or who are repetitive offenders." *Statement to Assembly Bill No. 641, 1983*.

age at the time of the offense and the seriousness of their offenses, the juveniles in question had very little chance of defeating a waiver motion under the statute as it existed prior to this amendment. Nonetheless, even an unsuccessful rehabilitation hearing often delays a waiver decision for as much as a year or more. By shortening the waiver process for these juveniles, the amendment will ease overcrowding in juvenile detention centers and benefit crime victims.

The legislature's action in expediting waiver for this group of cases mirrors a national trend. The Office of Juvenile Justice and Delinquency Prevention recently issued a report stating that during the 1990's, an increasing number of State legislatures have enacted mandatory waiver or exclusion statutes. The authors also reported that most States have a combination of transfer provisions — as New Jersey now does. Fifteen states have some form of prosecutorial waiver and 28 states have statutory provisions which exclude certain juvenile offenders from being tried in juvenile court.² This amendment brings New Jersey in line with the majority of other States by creating a subgroup of cases which are subject to prosecutorial waiver.

Scope of the Guidelines

The amendments provide that “[t]he Attorney General shall develop for dissemination to the county prosecutors those guidelines or directives deemed necessary or appropriate to ensure the uniform application of this section throughout the state.” *N.J.S.A. 2A:4A-26f.* Upon reviewing the waiver statute and amendments, it has been determined that guidelines are necessary only for the new subgroup of cases which are now subject to prosecutorial waiver under the amendments. Therefore, these guidelines apply only to those cases in which the juvenile is not permitted to overcome the waiver application by showing that the probability of rehabilitation by the use of the procedures, services and facilities available to the court prior to the juvenile reaching the age of 19 substantially outweighs the reasons for waiver. *N.J.S.A. 2A:4A-26e.*

²Snyder, Howard N. and Sickmund, Melissa (September 1999) *Juvenile Offenders and Victims: 1999 National Report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 102 - 109.

Procedures for the other cases subject to involuntary waiver under this law have not been changed and no guidelines are necessary. For those juveniles subject to waiver, who may still overcome the waiver request by showing that the probability of rehabilitation by the use of the procedures, services and facilities available to the court prior to the juvenile reaching the age of 19 substantially outweighs the reasons for waiver, a substantial body of caselaw exists which provides adequate guidance to prosecutors.

Development of the Guidelines

In developing these guidelines, similar decision making models governing the use of discretion were considered. The aggravating and mitigating factors for incarceration contained in the juvenile code were reviewed. *N.J.S.A. 2A:4A-44a*. These factors were fashioned for a judicial decision maker seeking to determine the best disposition for a juvenile remaining in the juvenile justice system. However, since the guidelines herein apply only to the most serious offenses committed by juveniles aged 16 or older, many of the juvenile code's aggravating factors are present in every case that comes within the scope of these guidelines. Moreover, due to the seriousness of the offenses involved, the prosecutor's decision in these waiver cases rests primarily on objective factors, such as the nature of the offense, rather than subjective factors, such as the juvenile's individual characteristics. A balancing process based solely on aggravating and mitigating factors is, therefore, inappropriate for this group of cases.

The Pre-Trial Intervention admission guidelines contained in *N.J.S.A. 2C:43-12* and *R. 3:28* are a more useful model. These guidelines are more suited to the exercise of prosecutorial discretion. Some of the factors utilized in these guidelines were drawn from this model. However, these factors were fashioned in such a way as to account for the differences between the goals of PTI admission and waiver to adult court. In addition, some factors included in the guidelines were derived from the extensive body of New Jersey caselaw that has developed regarding waiver.

Waiver Determination

I. Factors to be Considered

In determining whether to file a waiver motion, a prosecutor shall consider the following factors:

1. Nature of the Offense

The prosecutor shall consider the nature of the offense, including:

1. The death of a victim during the course of the offense;
2. The nature and circumstances of the act;
3. The role of the juvenile therein;
4. The fact that there was grave and serious harm inflicted on the victim or the community;
5. The potential for grave and serious harm to the victim or the community; and
6. The use or possession of a weapon during the course of the offense.

2. Deterrence

The prosecutor shall consider the need for deterring the juvenile and others from violating the law.

3. Effect on Co-Defendants

The prosecutor shall consider the effect of waiver on the prosecution of any co-defendants, juvenile or adult, so as to avoid an injustice if similarly situated culpable individuals are tried in separate trials.

4. Maximum Sentence and Length of Time Served

The prosecutor shall consider and compare the maximum sentences that may be imposed under the juvenile or criminal codes and the amount of time likely to be

served. Furthermore, the prosecutor may consider the likely effect on the amount of time served by the juvenile of enhanced sentencing provisions, such as the extended term provisions of the juvenile code contained in *N.J.S.A. 2A:4A-44*, the No Early Release Act, the Graves Act or any other mandatory or enhanced dispositions or sentences.

5. Prior Record

The prosecutor shall consider the juvenile's prior record, including:

1. The seriousness of any acts for which the juvenile has been adjudicated delinquent;
2. Any offenses for which the juvenile has been waived and convicted as an adult;
3. Any involvement of the juvenile with a gang; and
4. The history of the use of physical violence toward others and the extent to which the juvenile may present a substantial danger to others.

6. Trial Considerations

The prosecutor shall consider the likelihood of conviction and the potential need for a grand jury investigation.

7. Victim's Input

If there is an identifiable victim, the prosecutor should confer with the victim or victim's family regarding the victim's input on the waiver decision. However, the waiver decision rests with the prosecutor, not the victim.

II. Pleas to Juvenile Delinquency Charges

Nothing in these guidelines shall preclude a prosecutor from accepting a guilty plea to one or more juvenile delinquency charges in lieu of waiver.

III. Review and Approval

The assistant prosecutor making the initial waiver decision shall prepare a written statement of reasons for waiver. The statement shall include an account of all factors considered and deemed applicable.

The waiver decision shall be reviewed and approved by the County Prosecutor or by his or her designee. The County Prosecutor may designate an assistant prosecutor to perform this function. The chief of the juvenile unit in the County Prosecutor's Office may be designated to perform this function, provided the chief of the juvenile unit is not the assistant prosecutor making the initial waiver decision.

Addendum

P.L. 1999, C. 373 contains an anomaly in that pursuant to paragraph e., no rehabilitation hearing is required for violation of *N.J.S.A. 2C:39-4.1* (weapon possession while committing certain CDS crimes). However, a violation of *N.J.S.A. 2C:39-4.1* is not listed as a basis for waiver under the Act. The Attorney General will request that this oversight be remedied by the legislature.

LAWS OF: 1999
CHAPTER: 373
APPROVED: 1-14-00

[Second Reprint]
SENATE, No. 286

STATE OF NEW JERSEY
208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Senator JOHN A. GIRGENTI
District 35 (Passaic)
Senator LOUIS F. KOSCO
District 38 (Bergen)

Co-Sponsored by:

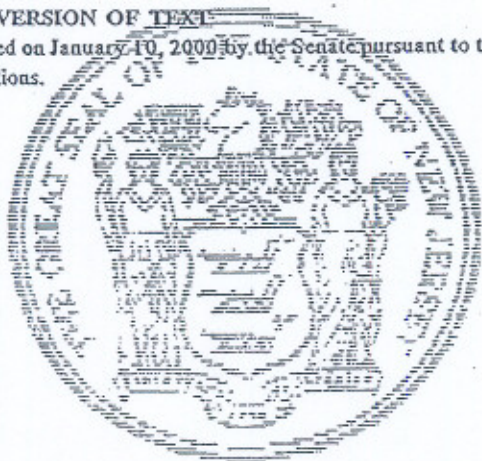
Senators Bucco, Sacco, Assemblymen Carroll and Merkt

SYNOPSIS

Eases conditions for trial of certain juvenile offenders as adults.

CURRENT VERSION OF TEXT

As amended on January 10, 2000 by the Senate pursuant to the Governor's recommendations.



(Sponsorship Updated As Of: 12/14/1999)

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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 7 of P.L.1982, c.77 (C.2A:4A-26) is amended to read as
8 follows:

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

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

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

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted March 19, 1998.

² Senate amendments adopted in accordance with Governor's recommendations.

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

3 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of the
4 New Jersey Statutes; [and] or

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

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

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

28 b. [In every case where there is a motion seeking waiver, the
29 prosecutor shall within a reasonable time thereafter file a statement
30 with the Attorney General setting forth the basis for the motion. In
31 addition, the court shall, in writing, state its reasons for granting or
32 denying the waiver motion. The Attorney General shall compile this
33 information and report its findings to the Legislature 18 months after
34 the effective date of this act with the objective of developing, where
35 appropriate, guidelines as to the waiver of juveniles from the Family
36 Part.] (Deleted by amendment, P.L. . . c.) (now pending before the
37 Legislature as this bill).

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

41 d. A motion seeking waiver shall be filed by the prosecutor within
42 30 days of receipt of the complaint. This time limit shall not, except for
43 good cause shown, be extended.

44 c. If the juvenile can show that the probability of his rehabilitation
45 by the use of the procedures, services and facilities available to the
46 court prior to the juvenile reaching the age of 19 substantially
47 outweighs the reasons for waiver, waiver shall not be granted. This

1 subsection shall not apply with respect to ²a juvenile 16 years of age or
2 older who is charged with committing² any of the acts enumerated in
3 subparagraphs (a) or (i) of paragraph (2) of subsection a. of this section
4 or with respect to ²[any acts enumerated in subparagraph (e) of
5 paragraph (2) of subsection a. of this section which involve the
6 distribution for pecuniary gain of any controlled dangerous substance
7 or controlled dangerous substance analog while on any property used
8 for school purposes which is owned by or leased to any school or school
9 board, or within 1,000 feet of such school property or while on any
10 school bus, or any attempt or conspiracy to commit any of these acts]
11 a violation of N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998,
12 c.26 (C.2C:39-4.1)².

13 ¹f. The Attorney General shall develop for dissemination to the
14 county prosecutors those guidelines or directives deemed necessary or
15 appropriate to ensure the uniform application of this section throughout
16 the State.¹

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

18

19 2. This act shall take effect ²[immediately] on the 60th day
20 following enactment².