

Removal from Youth to Family Court

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**New York Raise
the Age**

Removals from YOUTH PART TO FAMILY COURT

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FIRST DEPUTY COUNTY ATTORNEY
SCHENECTADY COUNTY**



INTRODUCTION

In April 2017, New York State raised the age of criminal responsibility with a phased in approach. This means that New York no longer automatically prosecutes 16 and 17 year olds as adults.

Provisions in law created a new category called Adolescent Offenders. This category covers 16 and 17 year olds alleged to have committed felony level crimes.

Adolescent Offenders

01

Housed in Specialized Secure Detention Beds

02

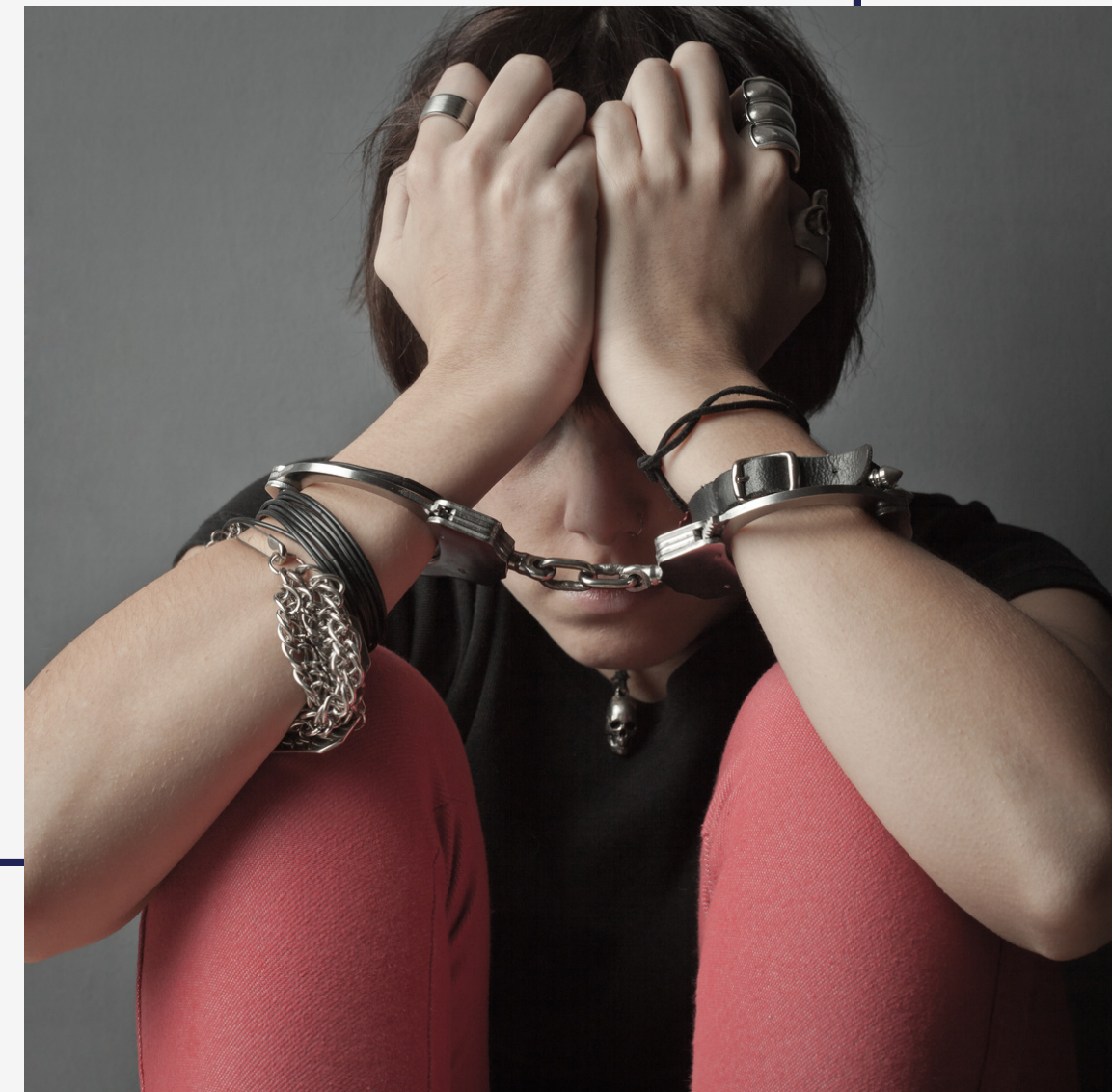
A Presumption of Removal to Family Court

03

Age Appropriate Services will be provided

04

Sealing of records



How does a case get removed to Family Court and why does it matter to us?



Extraordinary Circumstances

**CPL 722.23(1)(a)-
(h)**

This Term isn't defined
in the Criminal
Procedure Law

Aggravating Factors

**CPL 722.23(2)(a)-
(e)**

These Factors are
specifically laid
out for us

EXTRAORDINARY CIRCUMSTANCES

MOTION TO RETAIN

- DA must file a written motion to prevent removal
- “Prompt” notice to Defendant
- Sworn to based upon personal knowledge of Affiant

REPLY

The Defendant will have time to reply. “any reasonable request for a delay” will be sufficient to grant an extension of time to reply to the motion

HEARING

Either party can request a hearing.

The hearing will be held “expeditiously”

What are “Extraordinary Circumstances”?

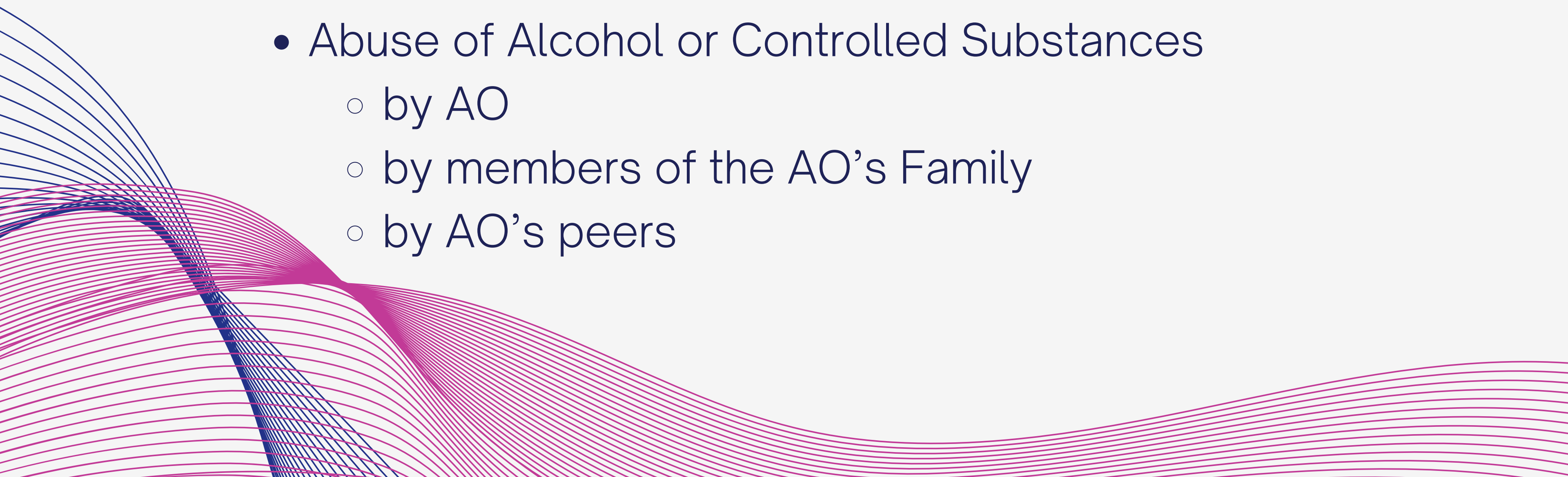
Broken down into :

- 1. Mitigating Factors (reasons to remove to Family Court)**
- 2. Aggravating Factors (reasons to keep in Adult Court)**

Mitigating FACTORS

- Economic Difficulties
- Substandard Housing
- Poverty
- Difficulties Learning
- Educational Challenges
- Lack of Insight
- Susceptibility to peer pressure due to immaturity

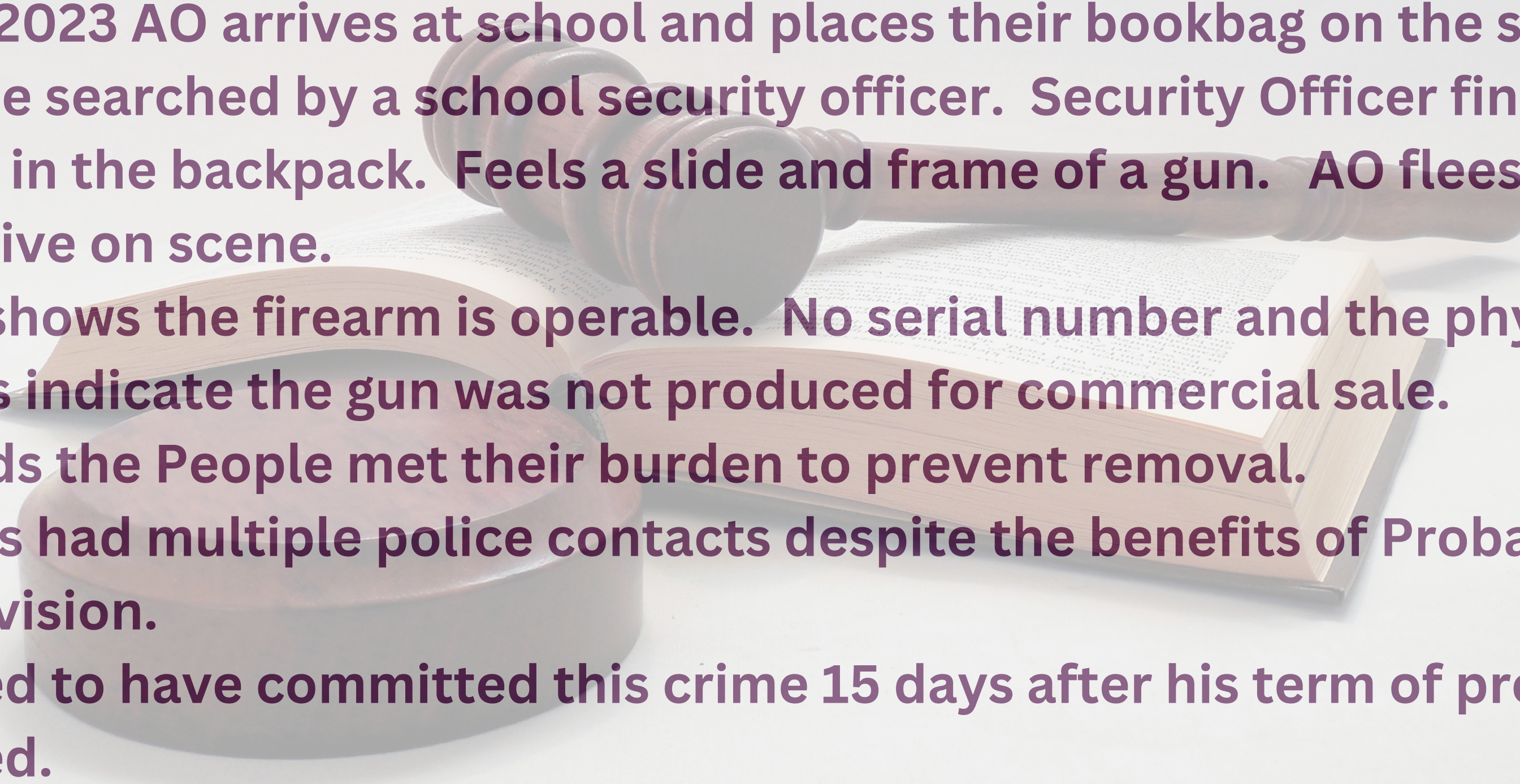
Mitigating FACTORS

- Absence of Positive Role Models
 - Absence of Behavior Models
 - Abuse of Alcohol or Controlled Substances
 - by AO
 - by members of the AO's Family
 - by AO's peers
- 

Aggravating Factors

1. Did AO commit a series of crimes over multiple days?
2. Did AO Act in an *Especially* cruel and heinous manner?
3. Did AO lead, threaten or coerce other reluctant youth into committing crimes before the Court?

1. People v. SG- 194 NYS3d 902 [Erie County 2023]

- a. AO had a matter previously removed to family court and another matter in the State of Iowa where he was prosecuted and placed on probation (as an adult).**
 - b. April 25, 2023 AO arrives at school and places their bookbag on the security table to be searched by a school security officer. Security Officer finds a magazine in the backpack. Feels a slide and frame of a gun. AO flees before police arrive on scene.**
 - c. Analysis shows the firearm is operable. No serial number and the physical attributes indicate the gun was not produced for commercial sale.**
 - d. Court finds the People met their burden to prevent removal.**
 - i. AO has had multiple police contacts despite the benefits of Probation supervision.**
 - ii. Alleged to have committed this crime 15 days after his term of probation expired.**
- 

People v. DB 115 NYS3d 652 [Erie County 2019]

- **AO was charged Robbery 1st, Endangering the Welfare of a child**
- **AO was charged with two robberies 9 days apart**
- **Court found AO to have acted in a cruel and heinous maner and the leader of the second robbery. Court found People met their burden to prevent removal**

Aggravating Factors or the 6 Day Hearing?

So we get some confusing language by calling the 6 day hearing an aggravating factors hearing, because aggravating factors is a term used in the extraordinary circumstances motion. So for our purposes we will call CPL 722.23(2) the “Six day hearing”.

SIX DAY HEARING



**NO LATER THAN SIX DAY FROM
ARRAIGNMENT THE COURT SHALL
REVIEW THE ACCUSATORY
INSTRUMENT**

WHAT DOES THIS MEAN?

The Court is reviewing the Accusatory Instrument for three factors

- **AO caused significant physical injury**

- **AO displayed a firearm, shotgun, rifle or deadly weapon**

- **AO had sexual contact as defined by PL 130.00**

Standard

**Preponderance of
the evidence**

**Six- day
hearing can
be waived**

WHAT IS A SIGNIFICANT PHYSICAL INJURY?

**SHOULD FALL SOMEWHERE BETWEEN
“PHYSICAL INJURY” PL § 10.00[9]
AND “SERIOUS PHYSICAL INJURY” PL
§10.00[10] WHICH ARE DEFINED IN
THE PENAL LAW**

·PEOPLE V. J.H., 119 NYS3D 403 [NASSAU COUNTY COURT, 2020].

AO PLUS 4 CO-DEFENDANTS CONFRONT A VICTIM, ONE STABS THE VICTIM, AO (ALONG WITH OTHERS) KICKED AND PUNCHED VICTIM. INJURIES: BRUISES, PAIN, INTRACRANIAL BLEED AND STAB WOUND TO LOWER ABDOMEN.

COURT FOUND THAT DA DID NOT PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT AO CAUSED THE SIGNIFICANT PHYSICAL INJURIES OF A STAB WOUND OR INTERCRANIAL BLEED.

ACCOMPLICE LIABILITY DID NOT APPLY DUE TO THE PLAIN MEANING OF THE LANGUAGE IN THE AGGRAVATING FACTORS.

PEOPLE V. V.A.M., 154 NYS3D 375 [NASSAU COUNTY 2021]

AO WAS INVOLVED IN AN ARGUMENT WITH 15-YEAR-OLD VICTIM (HIS GIRLFRIEND AND MOTHER OF HIS 10-MONTH-OLD CHILD] IN THE PRESENCE OF HIS 11-YEAR-OLD SISTER AND 14-YEAR-OLD BROTHER.

AO INTENTIONALLY BROKE THE VICTIM'S PHONE, THROWING IT AGAINST A BEDROOM WALL CAUSING THE SCREEN TO SHATTER. AO SLASHED THE VICTIM WITH A LARGE KITCHEN KNIFE ABOUT HER LEFT LEG (5 TIMES), LEFT ARM (1 TIME), AND RIGHT SIDE OF HER CHEST (1 TIME) CAUSING LACERATIONS AND PUNCTURE WOUNDS WHILE THE VICTIM WAS HUDDLED IN A BALL ON THE FLOOR. THE VICTIM REQUIRED 7 STITCHES.

PHOTOS OF INJURIES WERE SUBMITTED.

7 STITCHES WITHOUT ONGOING HOSPITALIZATION OR TREATMENT BEYOND THE DATE OF THE INCIDENT AREN'T GOING TO BE ENOUGH.

COURT FOUND IT SHOULD BE REMOVED TO FAMILY COURT (ABSENT EXTRAORDINARY CIRCUMSTANCES MOTION)

DISPLAYING A FIREARM, SHOTGUN, RIFLE OR DEADLY WEAPON

PL 10.10(12) defines Deadly Weapon:

Any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged

Firearm is Defined in PL 265.00(3)(a) as any pistol or revolver

PEOPLE V. M.S., 155 NYS3D 31, [NASSAU COUNTY COURT 2021].

**DISPLAYED A LOADED FIREARM IN FURTHERANCE OF THE
CRIMES ALLEGED, SPECIFICALLY CRIMINAL POSSESSION OF A
WEAPON 2ND, CRIMINAL POSSESSION OF A WEAPON 4TH AND
MENACING 2ND.**

**AT THE HEARING, THE DISTRICT ATTORNEY DID NOT CALL ANY
WITNESSES. READ FROM THE ACCUSATORY INSTRUMENT AND
SUPPORTING DEPOSITIONS OF THE COMPLAINANT,
DEPOSITIONS OF THE INVESTIGATING OFFICER, DETECTIVE.
ENTERED A COPY OF THE OPERABILITY REPORT AND AO'S
WRITTEN STATEMENT OF ADMISSION.**

**ARGUMENTS AND ADDITIONAL HEARSAY-BASED FACTS ARE
ALLOWED.**



Sexual Contact as defined by 130.00

01 **These are going to be Rape,
Forcible Touching, Criminal
Sexual Act Allegations**

What happens once the case is removed

STATE OF NEW YORK
COUNTY OF SCHENECTADY

UCS-725-AO-YP
SCHENECTADY COUNTY COURT

Present: Hon. Mark W. Blanchfield

The People of the State of New York
vs.

Order of Removal - Youth Part [Adolescent Offender]

██████████
██████████
Schenectady, NY 12302

Docket Number: FYC-██████████
CJTN:
NYSID:
Index Number:
DA Case Number:

Sex: █████ Race: █████ DOB: █████

EYO: N YO: N

The above-named adolescent offender having appeared before the Youth Part of the superior criminal court of Schenectady County, it is hereby:

ORDERED that the criminal action is removed to the Schenectady County Family Court pursuant to Article 725 of the Criminal Procedure Law, and all pleadings and proceedings in the action, or a certified copy of thereof, including the minutes of any hearing inquiry or trial held in the action, the minutes of any grand jury proceeding, and the minutes of any plea accepted and entered, shall be transferred to the Schenectady County Family Court and shall be delivered to and filed with the clerk of the family court pursuant to the following provisions of law:

[CPL § 722.21(4) – Prosecutor did not file a Motion to Prevent Removal] The adolescent offender is charged with a felony, other than a class A felony defined outside PL § 220, a violent felony defined in PL § 70.02, or a felony listed in CPL § 1.20(42)(i)&(ii), except as provided in CPL § 722.23(2)(c), and the prosecutor has not filed a motion to prevent removal within 30 days of the arraignment or has notified the court that a motion to prevent removal pursuant to CPL § 722.23 will not be filed and pursuant to CPL 725.05 (3), CPL 180.75 (1), and the court's review of the accusatory instrument, there is reasonable cause to allege the adolescent offender committed the following act or acts, to wit: Criminal Mischief 3rd PL 145.05 EF

It is further **ORDERED** that the adolescent offender is released to the custody of the responsible adult, ██████████, and, being ELIGIBLE for adjustment services, is directed to appear for further proceedings at Schenectady County Family Court located at Schenectady County Family Court, 620 State St., Schenectady, NY on 08/28/2023 at 11:30 AM.

Dated: July 20, 2023

Mark W. Blanchfield

Hon. Mark William Blanchfield

WHAT HAPPENS IN YOUR COUNTY?

DO YOU AS AN ACA FOLLOW YOUR YOUTH PART CASES?

IS THERE COOPERATION WITH YOUR DISTRICT ATTORNEYS OFFICE?

**DOES YOUR PROBATION DEPARTMENT FOLLOW UP WITH VOLUNTARY
CASE PLANNING?**

**DOES YOUR COURT TRANSFER THE ACCUSATORIES OVER
AUTOMATICALLY OR DO YOU FILE A PETITION IN FAMILY COURT?**

WHAT ARE OR SHOULD BE BEST PRACTICES?

- **DISTRICT ATTORNEYS OFFICES WITH RAISE THE AGE UNITS**
- **RESOURCE COORDINATORS IN YOUTH PART**
- **COUNTY ATTORNEY APPEARING WITH PROBATION**
- **CONTROL DATES SET FOR FAMILY COURT FILINGS**

ARE YOU INDEPENDENTLY EVALUATING CASES BEFORE FILING PETITIONS?

- **A CASE THAT HAS BEEN THROUGH AN AGGRAVATING FACTORS HEARING OR EXTRAORDINARY CIRCUMSTANCES MOTION HAS BEEN VETTED BEFORE IT GETS TO YOU. HOW DOES THAT IMPACT YOUR CASE IN FAMILY COURT?**

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HOW ARE YOU GETTING CASE FILES FROM YOUR DISTRICT ATTORNEY?