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# Amendments--Penal Laws Relative to Delinquent Children--Treatment of Fifteen-Year-Old Child Charged with Capital Crime

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AMENDMENTS—PENAL LAWS RELATIVE TO DELINQUENT CHILDREN—TREATMENT OF FIFTEEN-YEAR-OLD CHILD CHARGED WITH CAPITAL CRIME.—“The time is well overdue to state in the law in no uncertain terms that a child under the age of fifteen has no criminal responsibility irrespective of the act involved.”<sup>1</sup> This statement made by Governor Dewey at the time he approved these bills effectively sums up the changes made by the Laws of New York 1948, cc. 553-557, effective March 29, 1948.

Chapter 554 rewords Section 486(3) of the Penal Law,<sup>2</sup> which defines delinquent children, and as revised includes all children under fifteen years of age and fifteen-year-olds who commit any crimes except those which are punishable by death or life imprisonment. Even in the latter case, however, such fifteen-year-olds may be treated as delinquent children if an order has been made removing the action to the Children's Court. Chapter 553 adds seven new subdivisions to Section 312 of the Code of Criminal Procedure denoting therein the process to be used for such removal. The Children's Court Act, the Domestic Relations Court Act and the Social Welfare Law have also been amended to the same effect.<sup>3</sup>

Before proceeding to discuss these changes, let us first examine the prior law in order that the true significance of these changes may be more clearly understood. Contrary to the general presumption of criminal responsibility<sup>4</sup> a child under the age of seven years was conclusively presumed to be incapable of committing any crime.<sup>5</sup> A child of seven years or more, but less than twelve years was presumed incapable of committing a crime, but this presumption was rebuttable upon sufficient proof of a capacity to understand the difference between right and wrong.<sup>6</sup> A child over twelve years fell under the general presumption of criminal responsibility.<sup>7</sup> These presumptions remain unchanged today. Of equal importance was the distinction made between crimes and juvenile delinquency. A child under

<sup>1</sup> Governor's memorandum on approving these amendments.

<sup>2</sup> N. Y. PENAL LAW § 486(3). “The word ‘delinquent’ shall include any child over seven and under sixteen years of age (a) who violates any law of the state or of the United States or any municipal ordinance or who commits any act which if committed by an adult would be a crime, *except any child fifteen years of age who commits an act which if committed by an adult would be punishable by death or life imprisonment, unless an order removing the action to the children's court has been made and filed pursuant to section 312(c) subdivision (c) and section 312F subdivisions (a) and (b) of the code of criminal procedure. . .*” [Part in italics added by new amendment.]

<sup>3</sup> N. Y. CHILDREN'S COURT ACT § 2(2) amended by chapter 555; N. Y. DOM. REL. CT. ACT § 2(15) amended by chapter 556; N. Y. SOCIAL WELFARE LAW § 371(3) (b) amended by chapter 557. Laws of N. Y. 1948.

<sup>4</sup> N. Y. PENAL LAW § 815.

<sup>5</sup> N. Y. PENAL LAW § 816; *People v. Davis*, 1 Wheeler, Cr. Cas. 230 (N. Y. 1823).

<sup>6</sup> N. Y. PENAL LAW § 817; *People v. Domenico*, 45 Misc. 309, 92 N. Y. Supp. 390 (Co. Ct. 1904).

<sup>7</sup> See *Murphy v. Perlstein*, 73 App. Div. 256, 76 N. Y. Supp. 657 (1st Dep't 1902).

sixteen who committed an act which would be a crime if committed by an adult, was not guilty of any crime, but of juvenile delinquency only.<sup>8</sup> The exceptions to this rule were those crimes punishable by death or life imprisonment which were four in number: treason, kidnapping, murder in the first degree and murder in the second degree. It would seem, however, that in the case of a child between seven and twelve years who had committed one of the aforementioned acts, it was necessary before treating such a child as a criminal that the presumption of incapacity be first successfully rebutted.

The changes as now made redefine a juvenile delinquent as any child over seven years and under sixteen years who commits any act in violation of the law, but if the child be fifteen years of age and the act be punishable by death or life imprisonment, the act may be considered juvenile delinquency if, but only if, an order removing the child to the Children's Court has been filed pursuant to Section 312 of the Code of Criminal Procedure. Hence, a child today under fifteen years of age who commits treason, kidnapping or murder in the first or second degree will escape the penalty of death or life imprisonment by virtue of this amendment. However, a child between fifteen and sixteen, although still a juvenile delinquent where other crimes are concerned, can yet be convicted of a crime that is punishable by death or life imprisonment. Whether such child shall be punished as a criminal or as a juvenile delinquent is now left to the discretion of certain defined authorities. The determination to treat as a criminal, rather than a delinquent, may take place in two ways: (1) the grand jury, the district attorney, or the court itself may feel that it should not recommend that the defendant be examined as provided by Section 312 of the Code of Criminal Procedure, or (2) the court, after the examination of the defendant, may feel that the ends of justice and the best interests of the state would not be served if the defendant were removed to Children's Court. In either case, the defendant would then be prosecuted as an adult criminal.

The procedure to be followed in removing a child charged with a capital crime to the Children's Court is as follows: (1) Upon presentation of the indictment, the district attorney may recommend that the defendant be examined in order that the court may determine whether the action should be removed to Children's Court and if such recommendation is approved, the indictment shall be filed as a sealed indictment, but only as to the public.<sup>9</sup> (2) The recommendation for examination of the defendant may be made by the grand jury, the district attorney or the court itself.<sup>10</sup> (3) If the defendant consents to the examinations, physical and mental, the indictment shall be held in abeyance.<sup>11</sup> (4) Should the court determine upon the conclusion

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<sup>8</sup> N. Y. PENAL LAW § 2186.

<sup>9</sup> N. Y. CODE CRIM. PROC. § 312-b.

<sup>10</sup> N. Y. CODE CRIM. PROC. § 312-c(a).

<sup>11</sup> N. Y. CODE CRIM. PROC. § 312-c(b).

of the examination that the action shall be removed to Children's Court, the indictment shall be dismissed and the action removed.<sup>12</sup> (5) Should the court determine that the action should not be removed, the indictment shall be unsealed and the defendant prosecuted as though the proceeding thereunder had not been had.<sup>13</sup> (6) No statements made by the defendant during the examination may be used against him, but they may, however, be taken into consideration at the time of judgment.<sup>14</sup> (7) All proceedings held under this article shall be private and held in a part of the court separate from those parts used for proceedings pertaining to adults.<sup>15</sup> (8) The proceedings under this section shall be applicable even before an indictment has been returned by the grand jury, if the district attorney so recommends.<sup>16</sup>

In a recent case the court interpreted these new amendments. Emile Scott, a boy of fifteen, was forcibly ejected from a dance hall by a police officer because of his conduct. Scott together with the defendant Irving Farrell took a rifle to the roof of a nearby building. Farrell returned to the street and when the officer emerged from the dance hall, he signaled to Scott who proceeded to fire upon and seriously wound the police officer. The court held that a child defendant under fifteen, regardless of the crime charged, is under the exclusive jurisdiction of the Children's Court, and a child between fifteen and sixteen is under the exclusive jurisdiction of the Children's Court until an indictment has been sworn out against such defendant.<sup>17</sup>

The statutes under discussion and those preceding them in the gradual process of evolution in dealing with child criminals have their basis in sociological and psychological research. It has been found to be harmful to throw such children into association with hardened criminals. Furthermore, the results of various studies indicate that it is often possible to educate youthful offenders to become upstanding citizens who respect the law. In the treatment of delinquents, punishment is not the aim, but rather each case is studied, family background and individual traits and interests are analyzed, all with a view to correction rather than punishment. It can be seen, therefore, that these new amendments are but another step forward in the attempt to accomplish this aim.

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<sup>12</sup> N. Y. CODE CRIM. PROC. § 312-c(c).

<sup>13</sup> N. Y. CODE CRIM. PROC. § 312-c(d).

<sup>14</sup> N. Y. CODE CRIM. PROC. § 312-d.

<sup>15</sup> N. Y. CODE CRIM. PROC. § 312-e.

<sup>16</sup> N. Y. CODE CRIM. PROC. § 312-h.

<sup>17</sup> *Matter of Farrell*, 191 Misc. 582, — N. Y. S. 2d — (N. Y. City Dom. Rel. Ct. 1948).