

**RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY**  
**RULE 5:22. REFERRAL TO OTHER COURTS**

**Rule 5:22-1. Referral at election of juvenile**

Any competent juvenile 14 years of age or older charged with delinquency may elect to have the action transferred to the appropriate court and prosecuting authority having jurisdiction. Any competent juvenile under 14 years of age charged with an offense which if committed by an adult would constitute murder as defined by *N.J.S. 2C:11-3* may elect to have the case transferred to the appropriate court and prosecuting authority. The judge shall inform the juvenile of the right to elect such referral at the initial detention or probable cause hearing. The judge shall determine that such election, if requested, has been made knowingly, willingly, voluntarily and after consultation with counsel.

**Note:** Source -- R.R. (1969) 5:9-5(a). Adopted December 20, 1983, to be effective December 31, 1983.

**Rule 5:22-2. Waiver of Jurisdiction and Referral Without Juvenile's Consent**

(a) Motion for Waiver of Jurisdiction and Referral. A motion seeking waiver of jurisdiction by the Family Part shall be filed by the prosecutor within 60 days after the receipt of the complaint, which time may be extended for good cause shown. The motion shall be accompanied by a written statement of reasons clearly setting forth the facts used in assessing all factors contained in N.J.S. 2A:4A-26.1 et seq., together with an explanation as to how evaluation of those facts support waiver for each particular juvenile.

(b) Waiver Hearing. At the waiver hearing, the court shall receive the evidence offered by the State and by the juvenile. No testimony of a juvenile at a hearing to determine referral by this rule shall be admissible for any purpose in any subsequent hearing to determine delinquency or guilt of any offense. The court also shall permit cross-examination of any witnesses. The State shall provide proof to satisfy the requirements of N.J.S. 2A:4A-26.1(c)(1) with respect to the age of the juvenile and N.J.S. 2A:26.1(c)(2) with respect to probable cause to believe that the juvenile committed one of the enumerated delinquent acts. The court also shall review whether the State considered the factors set forth in N.J.S. 2A:4A-26.1(c)(3).

(c) Factors to be Considered. The court may deny a motion by the prosecutor to waive jurisdiction of a juvenile delinquency case if it is clearly convinced that the prosecutor abused his or her discretion in considering the factors set forth within N.J.S.A. 2A:4A-26.1(c)(3).

(d) Standards for Referral. The court shall waive jurisdiction of a juvenile delinquency action without the juvenile's consent and shall refer the action to the

appropriate court and prosecuting authority having jurisdiction pursuant to N.J.S. 2A:4A-26.1(c).

(e) Order to Waive Jurisdiction and for Referral. An order waiving jurisdiction of the case and referring the case to the appropriate court and prosecuting authority shall specify therein the alleged act or acts upon which the referral is based, and all other delinquent acts charged against the juvenile arising out of or related to the same transaction.

**Note:** Source -- R.R. (1969) 5:9-5(b), (c). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b)(2)(E) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b)(2)(F) and (b)(4) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b)(2)(D), (E) and (F) amended, paragraph (b)(2)(G) adopted June 28, 1996 to be effective September 1, 1996; paragraphs (b) and (b)(1) amended, former paragraphs (b)(2), (b)(3), and (b)(4) deleted, new paragraphs (b)(2), (b)(3), and (b)(4) added July 10, 2002 to be effective September 3, 2002; paragraphs (b)(2)(B) and (b)(2)(C) amended, new paragraph (b)(2)(D) adopted, paragraph (b)(3) caption amended, paragraphs (b)(3)(B) and (b)(3)(C) amended, new paragraph (b)(3)(D) adopted July 28, 2004 to be effective September 1, 2004; new paragraph (b) added, and former paragraphs (b), (c), (d) redesignated as paragraphs (c), (d), (e) June 15, 2007 to be effective September 1, 2007; caption amended, paragraphs (a) and (b) caption and text amended, new paragraph (c) adopted, former paragraph (c) redesignated as paragraph (d) and text amended, former paragraph (d) redesignated as paragraph (e) and caption and text amended, former paragraph (e) deleted with text relocated to paragraph (b) August 1, 2016 to be effective September 1, 2016.

### **Rule 5:22-3. Detention hearing after referral**

When a case is referred to another court as provided by R. 5:22-1 or R. 5:22-2, the court waiving jurisdiction shall, on hearing, determine pursuant to N.J.S. 2A:4A-36 whether detention is necessary. If detention is deemed necessary, there shall be a presumption that the juvenile shall be detained in a county juvenile detention facility, unless good cause is shown that it is necessary to detain the juvenile in a county jail or other county correctional facility in which adults are incarcerated. In no case shall a juvenile be remanded to an adult detention facility prior to the hearing provided for herein.

**Note:** Source -- R.R. (1969) 5:9-5(d). Adopted December 20, 1983, to be effective December 31, 1983; caption and text amended November 5, 1986 to be effective January 1, 1987; amended August 1, 2016 to be effective September 1, 2016.

### **Rule 5:22-4. Proceedings after Waiver**

(a) Procedure. Whenever a juvenile is referred to another court as provided by R. 5:22-1 or R. 5:22-2, the action shall proceed in the same manner as if it has been instituted in that court in the first instance, and shall be subject to the sentencing provisions available to that court.

(b) Custodial Sentence Upon Conviction. Upon conviction for any offense which is subject to waiver pursuant to N.J.S. 2A:4A-26.1(c)(2), there shall be a presumption that the

juvenile shall serve any custodial sentence imposed in a State juvenile facility operated by the Juvenile Justice Commission until the juvenile reaches the age of 21, except as provided in N.J.S. 2A:4A-26.1(f).

**Note:** Source -- R.R. (1969) 5:9-5(e). Adopted December 20, 1983, to be effective December 31, 1983; caption amended, text amended and designated as paragraph (a) with caption added, and new paragraph (b) adopted August 1, 2016 to be effective September 1, 2016.

### **5:22-5. Remand to the Family Part**

(a) Remand with Consent of Parties. With the consent of the juvenile defendant and the prosecutor, at any point in the proceedings subsequent to the decision ordering waiver, the Criminal Division may remand to the Family Part if it appears that:

(1) the interests of the public and the best interests of the juvenile require access to programs or procedures uniquely available in the Family Part; and

(2) the interests of the public are no longer served by waiver.

(b) Remand for Conviction of Non-Waivable Offense. If a juvenile is not convicted of an offense set forth in N.J.S.A 2A:4A-26.1(c)(2), a conviction for any other offense shall be deemed a juvenile adjudication and be remanded to the Family Part for disposition, in accordance with the dispositional options available to the Family Part and all records related to the act of delinquency shall be subject to the provisions of section 1 of P.L. 1982, c.79 (C.2A:4A-60).

**Note:** Adopted August 1, 2016 to be effective September 1, 2016.