

### Raise the Age Goes Into Effect for 16-Year-Olds

The Raise the Age law went into effect on October 1, 2018, marking the first phase of the reform.



### What has changed for adolescents since October?

- When 16-year-olds are arrested, their parents must be notified.
- When police question a 16-year-old, it must take place in an age-appropriate setting, with parental involvement, and for limited, developmentally-appropriate periods of time.
- All 16-year-olds charged with a **misdemeanor** (other than vehicular and traffic misdemeanors) now have their cases heard in Family Court instead of adult Criminal Court. In Family Court, their cases can be “adjusted”—resolved without the need to file a case in court.
- Sixteen-year-olds charged with a **misdemeanor** in Family Court will not be exposed to a permanent criminal record.
- All 16-year-olds charged with a **felony** now have their cases heard first in the new Youth Part of the adult Criminal Court. Most felonies (other than the most serious) will transfer to the Family Court, where they may be adjusted and they will not have a permanent criminal record, unless the court finds there are “extraordinary circumstances.”
- Sixteen-year-olds charged with allegedly displaying a deadly weapon, causing “significant injury,” or

engaging in unlawful sexual conduct, will remain in the Youth Part of adult Criminal Court, unless the prosecutor consents to remove the case to Family Court.

- Sixteen-year-olds in the Youth Part are now before a judge trained in adolescent development and family law.
- Sixteen-year-olds arrested for offenses after October 1, 2018 are no longer housed in adult facilities or jails. In NYC, this also applies to 17-year-olds.

According to one probation officer, “I think it’s long overdue. I’ve worked in probation for about 25 years, and I know it takes people a lot longer to grow up than 16 years. Physically, your brain isn’t fully developed until you are 25. The hope was to avoid detention and provide services to youths.”<sup>i</sup>

### Local Planning for Implementation

*Local Court Planning* – The statewide Office for Court Administration spent the last year working with local court systems to prepare for Raise the Age, conducting training, creating an operating manual, and building new technology and case management tools to track cases.<sup>ii</sup> There are new Youth Parts in each county<sup>iii</sup>, where cases for 16-year-olds who are charged with a felony are first heard.

Raise the Age is expected to generate a significant increase in workload for the judiciary in 2019-2020, especially the Family Court. Projections include case load growth of over 6000 new filings in Family Court this year, as the majority of 16-year-olds will either have their case adjusted or proceed in family court.<sup>iv</sup>

*Local Probation and Services Planning* – Many counties across the state have been working on their Raise the Age implementation plans since the summer. The purpose of these plans is to create a local approach to:

- Reduce reliance on detention
- Increase probation adjustment (diversion)

- Reduce the need for Family Court adjudication
- Arrange for community-based services to improve outcomes for youth
- Reduce reliance on out-of-home placements
- Reduce the rate of probation violations which result in youth being detained or placed
- Reduce long-term recidivism rates

Led by local departments of probation, social services and other municipal or county officials, some communities have used the planning process as an opportunity to take a closer look at how they have been serving justice-involved youth and families, how to strengthen existing community partnerships and create new connections, and where there are gaps in services and resources that Raise the Age could help fill. Some local stakeholders are already reporting improvements for youth under the law:

- **In Albany**, the Department of Probation expanded training for its juvenile staff, emphasizing diversion for youth through community-based services and supports, and its approach to victim engagement to support diversion. The result is that **nine out of ten teens are having their cases handled without the need for a petition to be filed in Family Court.**
- **In Rochester, Teen Court is seeing 16-year-olds charged with misdemeanors for the first time.** A model of diversion for adolescents, the Teen Court pre-dates Raise the Age, but is now hearing cases of misdemeanor-charged 16-year olds. The format includes restorative circles, where young people have the opportunity to tell their story and answer questions from peers. A recent case involved a 16-year-old arrested at school. Charged with a misdemeanor, his case could now be adjusted, and participate in the Teen Court program, where he revealed his own history as a victim of bullying, isolation and disengagement from school. His case was successfully diverted from Family Court, and he is getting the support he needs.

- **In Ulster, the county approved a new Restorative Justice and Community Empowerment Center** to expand existing capacity to serve youth and their families with specialized, evidence-based programs specifically aimed at reducing recidivism through a variety of services.
- **In Westchester, 90% of 16-year-olds cases that start in the Youth Part have been transferred to Family Court or probation intake** to explore whether the case can be adjusted without further court involvement.
- **In NYC, the City successfully moved nearly 100 16- and 17-year-olds off of Rikers Island to the Horizon Juvenile Detention Center**, meaning that there are no more youth under 18 detained on Rikers.

According to one prosecutor, “once they’re in the system, the collateral damage is horrible. ... They can’t get housing, they can’t get student loans, they can’t get into college — things that just affect their life. The hope here — and I think it will be successful — is that we’ll have a safer county and more productive young people.”<sup>v</sup>

### Early Statewide Results

*Adolescent Arrests* -- Arrests continue to decline dramatically for those younger than 18—down 65% since 2010, with a decline of nearly 25% in the last year alone.<sup>vi</sup> In January 2019 it was reported that since the October 1 effective date, felony arrests for 16-year-olds statewide had fallen more than 40%.<sup>vii</sup> This is consistent with experience across the country: raising the age of criminal responsibility has led to decreased recidivism and increased public safety.

*Cases Transferred to Family Court* -- For the first three months of implementation, 88% of felony-charged 16-year-olds had their cases transferred from the Youth Part of Criminal Court to the Family Court.<sup>viii</sup> This is what the law was designed to do: have the vast majority of youth’s cases proceed in the Family Court.

According to one juvenile justice expert who spent the day observing the new Youth Part in Brooklyn, “the conversations, whether by probation, defense attorneys, prosecutors or court personnel, centered around the presumption that the vast majority of cases return to family court.”<sup>ix</sup>

### Criminal Record Sealing

Raise the Age created new sealing provisions that went into effect over a year ago, on October 7, 2017.<sup>x</sup> Under the new law, anyone convicted of a crime can apply to have their records sealed after 10 years from sentencing or release from incarceration (whichever is latest). Individuals who were convicted of two or more felonies, a sex offense, violent felony, or other serious felonies are not be eligible to have their records sealed.

As of February 2019, 941 people of all ages had successfully petitioned a court to have a case sealed under the new law.<sup>xi</sup>

### Extraordinary Circumstances

Under the law, prosecutors may argue that “extraordinary circumstances” merit that a 16-year-old’s case should remain in the Youth Part of criminal court, when it could otherwise be transferred to Family Court.<sup>xii</sup> Courts have relied on the legislative history of Raise the Age to interpret the law, requiring prosecutors to meet a “high standard” and recognizing that “denials of transfer to the family court should be extremely rare.”<sup>xiii</sup>

Courts have considered not only the youth’s criminal history and the facts of the alleged crime, but also “mitigating circumstances,” including “a wide range of individual factors, such as ... substandard housing, poverty, learning difficulties, ... educational challenges, lack of insight and susceptibility to peer pressure due to immaturity, absence of positive role models, behavioral role models, abuse of alcohol or controlled substances by the defendant, [and] by family or by peers.”<sup>xiv</sup>

### Youth in Detention

Currently, 16-year-olds whose cases are heard in Family Court and are prosecuted as Juvenile Delinquents can be remanded to secure detention or non-secure detention. There are seven secure detention facilities for juveniles state-wide. As of April 5, 2019, there were 99 youth in secure detention.

### Secure Detention<sup>xv</sup>

County	Facility	Capacity	Census
Albany	Capital District Secure	24*	10
Erie	Erie County Secure	64	14
Monroe	Monroe County Children’s Center	21*	12
Nassau	Nassau Secure JDC	16	3
NYC	Crossroads Secure	106*	31
Onondaga	Hillbrook Secure	32*	15
Westchester	Woodfield Secure	34*	14
Total		297	99

Beds marked with an asterisk can accommodate both SD and SSD.

Sixteen year olds whose cases are in the Youth Part of adult Criminal Court are called Adolescent Offenders (AOs). If remanded by the court to detention while their case proceeds, they are held in specialized secure detention (SSD)—a new form of juvenile detention created under Raise the Age. To date, six SSDs have been certified by the State.<sup>xvi</sup> As of April 5, 2019 there were 47 youth in SSD state-wide.

### Specialized Secure Detention<sup>xvii</sup>

County	Facility	Capacity	Census
Albany	Capital District SSD	24*	3
Erie	Erie County SSD	40	6
Monroe	Monroe County SSD	21	7
NYC	Crossroads SSD	106*	20
Onondaga	Hillbrook SSD	32*	7
Westchester	Woodfield SSD	34*	4
Total		257	47

Beds marked with an asterisk can accommodate both SD and SSD.

### Funding for Ongoing Local Reform

The approved FY 2020 budget increases State funds for local implementation to \$200 million. This essential funding supports a continuum of services, including prevention, diversion, and treatment to help keep youth in their communities as the law's application expands to include 17-year-olds later this year. Funds are available for 100% reimbursement to communities for related costs, but only for approved expenses. Because funding is subject to the State's tax cap law, New York City is ineligible for this Raise the Age funding.

### Persons In Need of Supervision (PINS) Reform

The approved FY 2020 budget also includes changes in the State's approach to status offenses and youth at-risk for, or adjudicated as, Persons In Need of Supervision (PINS). The adopted budget ends the use of non-secure detention for PINS youth, continues access to diversion and respite services for youth and families to prevent PINS filings in Family Court, and allows the court to place youth in foster care when necessary for an initial period of no more than 60 days, with a possible extension for up to 10 months.<sup>xviii</sup> State funding for PINS placement sunsets January 1, 2020 under Raise the Age.

### Close to Home in NYC

First established by legislation in 2012, the Close to Home program keeps NYC youth adjudicated by the Family Courts as juvenile delinquents in the City (or Westchester), rather than being placed in State facilities far from their communities. As the majority of 16-year-olds (and later this year, 17-year-olds) have their cases heard in Family Court, the program will have to absorb additional youth and provide them with developmentally-appropriate services. However, because juvenile arrests and detention continue to decline, there appears to be sufficient capacity at this time.<sup>xix</sup>

For more information, contact:

**Children's Defense Fund-NY:** 815 2nd Avenue, 8th Floor, New York, NY 10017 | (212) 697-0882

**Citizens' Committee for Children of New York, Inc.:** 14 Wall Street, Suite 4E New York, NY 10005 | (212) 673-1800

**Families Together in NYS:** 737 Madison Avenue, Albany, NY 12208 | (518) 432-0333

**Youth Represent:** 11 Park Place, Suite 1512 New York, NY 10007 | (646) 759-8080

<sup>i</sup> Mike Hibbard, *Raise the Age legislation causing no concerns*, Finger Lake Times, Mar. 3, 2019, at: [https://www.fltimes.com/news/raise-the-age-legislation-causing-no-concerns/article\\_c9aaa351-d696-5ce3-9380-299c2469400d.html](https://www.fltimes.com/news/raise-the-age-legislation-causing-no-concerns/article_c9aaa351-d696-5ce3-9380-299c2469400d.html).

<sup>ii</sup> Testimony of Chief Administrative Judge Lawrence K. Marks, Jan. 29, 2019, at: <https://www.nysenate.gov/calendar/public-hearings/january-29-2019/joint-legislative-public-hearing-2019-2020-executive-budget> (video).

<sup>iii</sup> *Id.*

<sup>iv</sup> Joint Legislative Hearing on the 2019-20 Judiciary Budget, Remarks of Chief Administrative Judge Lawrence K. Marks, Jan. 29, 2019, at: [https://www.nysenate.gov/sites/default/files/testimony\\_given\\_by\\_chief\\_administrative\\_judge\\_of\\_the\\_unified\\_court\\_system.pdf](https://www.nysenate.gov/sites/default/files/testimony_given_by_chief_administrative_judge_of_the_unified_court_system.pdf), at 5-6.

<sup>v</sup> Abigail Weinberg, *Benefits of Raise the Age Legislation for Teen Offenders Discussed at Community Forum*, The Examiner, Mar. 15, 2019, at: <https://www.theexaminernews.com/benefits-of-raise-the-age-legislation-for-teen-offenders-discussed-at-community-forum/>.

<sup>vi</sup> FY 2019-2020 Budget Testimony, Division of Criminal Justice Services, Jan. 29, 2019, at:

[https://www.nysenate.gov/sites/default/files/testimony\\_given\\_by\\_division\\_of\\_criminal\\_justice\\_services.pdf](https://www.nysenate.gov/sites/default/files/testimony_given_by_division_of_criminal_justice_services.pdf), at 2.

<sup>vii</sup> *Id.*

<sup>viii</sup> See endnote ii.

<sup>ix</sup> Marcy Mistrett, *New York Raise The Age Is Making Strides Where It Counts*, JJI.E.org, Jan. 23, 2019, at: <https://jjiie.org/2019/01/23/new-york-raise-the-age-is-making-strides-where-it-counts/>.

<sup>x</sup> See CPL Sec. 160.59.

<sup>xi</sup> Number of Individuals with Criminal Convictions Sealed via CPL 160.59 (as of 3/22/2019), at: <https://www.criminaljustice.ny.gov/crimnet/ojsa/Raise-the-Age-Provision-Sealing-Report.pdf>.

<sup>xii</sup> See e.g., *D.P.*, 2019 NY Slip Op 50261(U); *A.G.*, 2018 NY Slip Op 51963(U); *J.P.*, 2019 NY Slip Op 29059.

<sup>xiii</sup> *J.P.*, 2019 NY Slip Op 29059 (citing the legislative history).

<sup>xiv</sup> *Id.*

<sup>xv</sup> Secure Detention Daily Census Report, Updated April 5, 2019, at: <https://ocfs.ny.gov/main/rehab/facilities.asp>.

<sup>xvi</sup> Specialized Secure Detention Facilities, Updated April 5, 2019, at: <https://ocfs.ny.gov/main/rehab/facilities/SD-SSDcontactinfo.pdf>.

<sup>xvii</sup> *Id.*

<sup>xviii</sup> See S01506 Budget Bill (FY 2020 ELFA, section K).

<sup>xix</sup> See Marsha Weissman, et al., *Moving Beyond Youth Prisons: Lessons from New York City's Implementation of Close to Home* (2019), at: [https://justicelab.columbia.edu/sites/default/files/content/Moving%20Beyond%20Youth%20Prisons%20-%2020C2H\\_0.pdf](https://justicelab.columbia.edu/sites/default/files/content/Moving%20Beyond%20Youth%20Prisons%20-%2020C2H_0.pdf).