

Beginning October 1, 2018, 16-year olds will no longer be automatically prosecuted as adults in New York State. Beginning October 1, 2019, the same will apply for 17-year olds.

Raise the Age & New York State

A Step in the Right Direction

Legislative Changes

On April 10, 2017, Governor Cuomo signed legislation raising the age of criminal responsibility to 18 in most cases and prohibiting the incarceration of youth under 18 in adult facilities. This made New York the 49th state to stop the automatic prosecution of 16- and 17-year olds as adults.

The new measures will be implemented gradually. Starting October 1, 2018, 16-year olds will no longer be automatically prosecuted as adults and the same will apply to 17-year olds on October 1, 2019. Under the statute, adolescents charged with misdemeanors and certain non-enumerated felonies will be charged in family court rather than criminal court. Adolescents under the age of 18 will no longer be detained in adult facilities. In 2017, the Justice Policy Institute released an executive summary, "Raising the Age: Shifting to a Safer and More Effective Juvenile Justice System," which provides a detailed summary of how various states have adapted to the Raise the Age legislation.

Those charged with nonviolent offenses will be referred to Family Court where they can receive support services and, if necessary, be sent to juvenile facilities. Adolescents charged with felonies that are processed through the adult system will be sent through a newly established "Youth Part" staffed by specially trained judges. Violent felonies may also be transferred to Family Court under special circumstances.

Why Raise the Age?

Incarcerating adolescents, especially alongside adults, has known negative effects on individuals, families, and communities. Adolescent confinement impairs one's development into a productive adult, decreases public safety, and encourages an unfair application of sanctions.

New York has historically cycled adolescents in and out of a system that does not meet their needs, that often fails to acknowledge that justice-involved adolescents need additional support and guidance, and that perpetuates disparate outcomes along the lines of race and class. In 2015:

- Nearly 28,000 16- and 17-year olds in New York were arrested and faced the possibility of being charged as adults;¹
- 3,148 of those adolescents were sentenced to incarceration in adult prisons; the majority were charged with committing nonviolent crimes;²

1. New York State Division of Criminal Services, *Dispositions of Youth Arrests (16 and 17 year olds)*, 2018.
2. Raise the Age Campaign, *Who & Where Are the Children in New York's Justice System without Raise the Age*, 2017.

- Over 70% of 16-17 year olds were Black or Latino; 80% of those sentenced to incarceration were Black or Latino;³
- Black adolescents were 17% percent of the total adolescent population but constituted 30% of total adolescent arrests and 62% of adolescents prosecuted by the adult justice system.⁴

Leading developmental psychology research suggests that charging adolescents as adults has a detrimental effect on a young person's mental development. The human brain is not fully formed until age 25, as the prefrontal cortex, which controls reasoning, impulse control and advanced thought, is the last part of the brain to reach maturity.⁵ Research shows that adolescents are significantly more likely than adults to be permanently traumatized by confinement in adult facilities. When incarcerated with adults, adolescents are at high risk for violent victimization. In 2005, adolescents under 18 were 1% of all adult inmates but accounted for 21% of victims of sexual violence.⁸ To account for higher levels of victimization, adolescents are often placed in isolation or solitary confinement in prisons ill equipped to deal with the resulting mental health issues. Adolescents housed in adult facilities are 5 times more likely to commit suicide than adolescents in juvenile detention facilities.⁷

Moreover, criminal convictions can have substantial collateral consequences for young people, including lasting barriers to employment, education, and immigration status. Justice-involved adolescents are substantially less likely to graduate high school than their non-justice-involved peers.⁸ They are also highly likely to return to prison or jail. Indeed, adolescents prosecuted in the adult justice system are 34% more likely to be re-arrested for committing violent offenses more serious than the original offense.⁹

A Different Approach

As prosecutors adapt their practice to comply with Raise the Age legislation, they would do well to consider attempting to improve outcomes for adolescents currently being cycled through the system.

By way of example, in 2014, Onondaga County, NY, and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) implemented a multi-institutional partnership called the Onondaga County Partnership for Youth Justice. Onondaga developed this program to foster innovative strategies and partnerships for rethinking the juvenile justice process and its outcomes.

The Partnership for Youth Justice/JDAI consists of various members of law enforcement, the county attorney's office, attorneys for the adolescents, clergy, health services, district schools, family court, probation, and community organizations. The Partnership determined a number of priority areas to help decrease justice involvement for adolescents while empowering the community to take action. The priority goals included:

- Elimination of inappropriate or unnecessary use of detention and placement;
- Minimization of failures to appear in court;
- Minimization of delinquent behavior and re-arrest;
- Redirection of public finances to successful community-based programs;
- Improvement of conditions of confinement;
- Investment in transitional/permanent living services for justice involved adolescents.¹⁰

Strategies developed included:

- Implementing a revised Family Court Appearance Ticket to decrease the time between arrest and first meeting with probation from 24 days to less than 14 days;
- Decreasing the time between the referral to the County Attorney and filing of petition from an average 87 days to 4 days;

3. Final Report of the Governor's Commission on Youth, Public Safety & Justice, *Recommendations for Juvenile Justice Reform in New York State*, 2015.

4. Campaign for Youth Justice, *Let's Get Children Out of Adult Court, Jails, and Prisons*, 2016.

5. Coalition for Juvenile Justice, *What Are the Implications of Adolescent Brain Development for Juvenile Justice*, 2006.

6. National Criminal Justice Reference Service, *National Prison Rape Elimination Commission Report*, 2009.

7. Campaign for Youth Justice, *Let's Get Children Out of Adult Court, Jails, and Prisons*, 2016.

8. Raise the Age Campaign, *Only New York and North Carolina Prosecute All 16- and 17-Year Old Children as Adults*, 2017.

9. Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: Report on Recommendations of the Task Force on Community Preventive Services*, 2007.

10. New York State Officer of the Governor, *Improving the Way New York's Justice System Treats Young People*, 2017.

- Referring adolescents whose cases were returned from Family Court for further efforts towards diversion on the same day as their court appearance, rather than up to 18 days later;
- Reducing probation officer caseloads.¹¹

Additionally, the Partnership invested in local organizations both to increase the community's ability to prevent justice involvement and to support those who require community supervision after justice involvement. Instead of the typical 2-4%, 39% of Onondaga County's juvenile justice funds were invested in local grassroots non-profit for community service providers.¹²

Using twice yearly reviews to evaluate the effectiveness of its strategies, the Partnership measured its success through:

- number of adolescents who enter the system at each stage;
- number of adolescents taken from their home,
- rearrests;
- adolescents enrolled and attending school,
- families connected to support services at discharge;
- justice-involved adolescents who obtain a high school diploma or GED; and
- justice-involved adolescents who did not have a criminal conviction at the conclusion of their cases.¹⁵

These metrics show significant decreases in adolescent detention and arrest rates. In 2016, the Special Supervision program, created to reduce the use of detention for juveniles who need supervision through case management services, found that:

- 85% of the adolescents involved in the program were not re-arrested;¹⁴
- 81% showed up for their court appearance;¹⁵
- In comparison to the same time period in 2014, in the first half of 2015, juvenile arrests and detentions had decreased by 17%.¹⁶

Conclusion

Much work remains to reduce the harm done to adolescents and to combat racial disparities within the criminal justice system. As democratically-elected officials, district attorneys can go beyond Raise the Age and use their power of discretion to implement immediate changes in the prosecution of young people. There are a number of ways that prosecutors can engage communities in these decisions. One example is reflected in the approach adopted by Onondaga County. There is tremendous potential for New York to create a new and effective path forward when processing juvenile justice cases well beyond the letter of Raise the Age alone.

11. Ibid.
 12. Ibid.
 13. Ibid.
 14. Onondaga County Department of Children & Family Services: Division of Juvenile Justice, *2016 Annual Report*, 2016.
 15. Ibid.
 16. Ibid.



Issue Brief | October 2018

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