

Raising the Age of Criminal Responsibility

The Impact on Counties

An Interim Report

Introduction

The enacted 2017-18 State Budget includes language to raise the age of criminal responsibility for non-violent felons from 16 to 18 by October 1, 2019. While the policies and regulations are still being worked out by various state agencies, implementing the new law will impact several county departments, and will require additional personnel and resources in probation departments, county attorney's offices, mental health services, and social service agencies. It will also require county investments in court facilities and youth detention or local correctional facilities.

Age Changes and Phase in Periods

Under the new law, the new provisions will be phased in over two years. On October 1, 2018, the age of criminal responsibility will be raised from 16 to 17 year olds. This means that a 16-year-old that is charged with a non-violent felony or a misdemeanor will be considered an Adolescent Offender (AO), and will be protected from the adult incarceration. On October 1, 2019, the age of criminal responsibility for these same crimes will be raised from 17 to 18 year olds.

Defining Adolescent Offender, Juvenile Delinquent, and Juvenile Offender

The new law creates a new class of offender called an Adolescent Offender (AO). An AO is defined as a 16 or 17 year old who is charged with a nonviolent felony.

Juvenile Delinquents (JD) are currently defined and will remain the same as youths from the ages of 7 to 15 years of age who are charged with misdemeanors. On October 1, 2018, this JDs will include 16 year olds charged with misdemeanors, and beginning October 1, 2019, this definition will also include similarly charged 17 year olds.

Juvenile Offenders (JO) are currently defined and will remain the same youths between the ages of 13 and 15 who commit certain serious crimes for which they can be held criminally responsible.

Impacted County Departments

Finance

Budget

Legal and Court Services

County Attorneys

District Attorneys

Public Defenders

Court Administration (family court, youth part)

Social Services

Mental Health

Public Health

Social Services

Public Safety

Sheriffs

Probation

Jail/Youth Facility

Administration

Additional Services

Employment Training

Youth Bureaus

Veterans programs (diversion)

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Arrest Procedures

Parental Notification

The new law requires that parents of youthful offenders are to be notified as soon as an offender has been arrested and detained. These youths cannot be questioned without parental or guardian involvement and counsel, and any interrogation must take place in an age-appropriate setting.

Probation Case Planning

Probation case planning will be the first line of services offered to a JO or AO. If the JO or AO voluntarily accepts probation services, a probation officer will be assigned and must conduct a risk and needs assessment. Any assessment made must be done while offender's counsel is present and be included in the offender's Pre-Sentencing Investigation report (PSI), which is already required under law to be presented to the judge or magistrate.

Court Modifications

The new law requires that all county courts establish a Youth Part. The judges overseeing the proceedings in the Youth Part must be Family County Judges with specialized training and appointed by the Superior Courts.

Violations

All violations will remain the same as current law and will be heard in local courts.

Misdemeanors

All misdemeanor cases, excluding Vehicle and Traffic law misdemeanors will now be held in Family Court, as happens now under current law.

Felonies

Under the new law, all non-violent felony cases will start in the Youth Part of the adult criminal court. All non-violent felonies will then be transferred to Family Court unless the District Attorney (DA) files a motion within 30 days. The DA's motion must include information citing "extraordinary circumstances" as to why the case should remain in the Youth Part of criminal court. The judge has 5 days to decide whether the case will be moved to Family Court or remain in the Youth Part of criminal court.

Violent felonies can also be transferred from the Youth Part to the Family Court. If the offender's charges do NOT include the accused displaying a deadly weapon during the offense, causing significant physical injury, or engaging in unlawful sexual conduct, the case will transfer to Family Court unless the (DA) files a motion within 30 days. The DA's motion must include information citing "extraordinary circumstances" as to why the case should remain in the Youth Part. The judge has 5 days to decide whether the case will be moved to Family Court or remain in the Youth Part of criminal court. Vehicle and Traffic Law cases and Class A felonies other than Class A drug offenses cannot be transferred and will remain in the Youth Part of Criminal Court.

For 16 and 17 year old offenders whose cases remain in the Youth Part will be referred to as AOs. Upon sentencing of the AO, a judge must take the youth's age into account

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when sentencing. AOs are eligible for Youthful Offender treatment, as is the current law with respect to 16 and 17-year-olds charged as adults.

Detention Facilities

Pretrial Detention

The new law prohibits 16 and 17 year olds from being placed in county jails. Beginning on October 1, 2018 a county must provide for 16 and 17 year olds in a specialized secure detention facility. The facilities will be certified and regulated by the Office of Children and Family Services (OCFS) and the State Commission on Corrections (SCOC).

The secure detention facilities must have enhanced security, specially trained staff and be administered by the appropriate county agency, and the county sheriff. Under current law, counties may contract with one another to share facilities that are considered secure detention facilities.

Post-Trial Detention

Under the new law, youths that have been sentenced to a year or less will serve their time in a county secure detention facility. If the sentence is longer than a year, the state is required to contract with at least one facility that will provide a housing.

This secure facility will be managed by the OCFS. An oversight council will be responsible for assessing the operations of the facility and reporting information to the Governor. The oversight council will include: OCFS, SCOC, and the Department of Criminal Justice Services (DCJS).

Sealing of Records

The new law allows for the sealing of records. Anyone convicted of an eligible offense in court may seek to have his/her record sealed after ten years from the sentencing or discharge. Sealing is only available for offenders who have no more than two convictions and one may not be a felony.

An offender must file the proper forms to request sealing to be created by Office of Court Administration (OCA). An offender is eligible for sealing after 10 years have passed since the imposition of the latest sentence or if sentenced to incarceration, including split sentence of probation and jail, once released from jail or prison. Sealed cases are still available to qualified agencies. All federal, state, and law enforcement agencies if needed will be able to view the sealed records.

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State Raising the Age Task Force

The Raise the Age (RTA) Law provides for a new Implementation Task Force, with members that will be appointed by the governor. The task for will be responsible for the following:

- Monitoring the overall effectiveness of the law by reviewing the state's progress in implementing the major components;
- Evaluating the effectiveness of the local adoption and adherence to the provisions of the law; and
- Reviewing the sealing provisions including but not limited to an analysis of the number of applicants, the number of individuals granted sealing, and the overall effectiveness of the law's sealing requirements.

Reimbursement

Probation

For county probation departments, the DCJS Commissioner will provide funding for evidence-based intervention services for suspected youth, adjudicated JD, or for eligible youth before or sentenced under Youth Part. Probation departments will also be 100% reimbursed for evidence-based practices and juvenile risk and evidence-based intervention services for 16-year-olds if these services were not provided prior to the enactment of this law.

The DCJS Commissioner may consider granting additional state aid for county probation services for juvenile risk intervention services coordination, and funding for evidence-based intervention service for JD and AO sentenced in Youth Part.

Under the new law, the state will eliminate state reimbursement to county probation departments for the placement or detention of persons in need of supervision (PINS), beginning January 1, 2020.

Sheriffs

State funding shall be available for 100% of a county's costs associated with the a sheriff's transportation services that would not otherwise have occurred without the implementation of this law.

County Departments

Reimbursement is provided to counties and New York City for the added costs resulting from raising the age of criminal responsibility unless the most recently adopted county budget exceeded the allowable tax levy limit as prescribed in the general municipal law.

The Director of the Division of the Budget is authorized to waive any local share of expenditures if the county or NYC can show financial hardship, which would include, but not be limited to, the occurrence of a disaster, extraordinary costs associated with maintenance and repair of infrastructure, including roads and bridges, snow removal, or such other factors as may be determined.

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NYSAC Raising the Age Taskforce

In response to the new law, NYSAC has created a RTA Taskforce to discuss the implementation of this new law. The taskforce is comprised of representations from the county departments that will most directly be affected by the legislation.

The mission of the RTA Taskforce is to help local leaders facilitate the implementation of the new law and provide leadership, guidance, assistance and track the fiscal impact so the counties can be fully reimbursed for the expanding impacted programs.

The goals of the taskforce are to:

- To generate and collect concerns and recommendations from all the county departments that will be affected by the new law,
- To report concerns and recommendations to that state to most effectively implement this new law,
- To engage local government and the state to work together to make sure the intention of the law is fulfilled, while providing the county departments responsible for implementation maintain funding and assistance from the state,
- Provide a communications system and procedure to provide guidance to local governments on the implementation of Raising the Age,
- To produce a model that can assist all the county departments that will be affected by the implementation of the new law, and
- To provide recommendations and guidance to the State Raising the Age Task Force.