

RAISE the AGE | NY

On April 10, 2017, Governor Cuomo signed into law “Raise the Age” legislation that was included as part of the State Budget. It can be found in A-3009c/S-2009c Part WWW.

KEY COMPONENTS OF THE LEGISLATION

The presumptive age of juvenile accountability is raised for 16 year olds effective 10/1/18 and for 17 year olds effective 10/1/19. Except as otherwise noted, all components described below are pursuant to this timeline.

The law will change cases for 16/17 year olds in the following ways:

Parental Notification

- Parents must be notified when their children are arrested.
- Questioning of youth must take place in age-appropriate settings, with parental involvement (including with regards to waiving Miranda rights), and for developmentally appropriate lengths of time.

Court Processing:

The vast majority of cases of 16-17 year olds will ultimately be heard in the Family Court, either originating there or being transferred there from the new Youth Part of the adult criminal court.

Misdemeanors:

- All misdemeanor cases (other than vehicle and traffic law misdemeanors) will be heard in Family Court pursuant to the Family Court Act. This includes Family Court Act procedures for adjustment and confidential records.

Felonies:

- All felony cases will start in the Youth Part of the adult criminal court.
- All **non-violent felonies** will be transferred from the Youth Part to the Family Court unless the District Attorney (DA) files a motion within 30 days showing “extraordinary circumstances” as to why the case should remain in the Youth Part. If DA files motion, there can be a hearing and the Judge must decide within 5 days of the hearing or motions whether to prevent the transfer of the case to Family Court.
- **Violent felonies** can also be transferred from the Youth Part to the Family Court. If the charges do NOT include the accused displaying a deadly weapon in furtherance of 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 showing “extraordinary circumstances” as to why the case should remain in the Youth Part. If the charge does include an element listed above, removal to Family Court is only possible with consent of the DA. Vehicle and Traffic Law cases and Class A felonies other than Class A drug offenses cannot be transferred.
- 16 and 17 year olds whose cases remain in the Youth Part will be referred to as “Adolescent Offenders.” Adult sentencing will apply, but the Judge must take the youth’s age into account when sentencing. Adolescent Offenders are eligible for Youthful Offender treatment, as is the current law with respect to 16 and 17 year olds charged as adults.
- Adolescent offenders may voluntarily participate in services while their case is pending.

Violations:

- Violations will be heard in adult criminal/local courts, as is the current law.

Family Court:

- Youth whose cases are heard in the Family Court will be processed pursuant to existing Juvenile Delinquency (JD) laws, which includes the opportunity for adjustment. They will not have a permanent criminal record.

Youth Part of Adult Court:

- New “Youth Parts” will be created. All 13-15 year old Juvenile Offenders and all 16-17 year Adolescent Offenders will have their cases in the Youth Part.
- Family Court Judges will preside over cases in the Youth Parts.

Facilities

- No 16 or 17 year old will be sentenced to or detained in a facility with adults. To the extent practicable, no youth under 18 will be held at Rikers by 4/1/18 and as of 10/1/18, a full prohibition against youth under the age of 18 being held at Rikers will be in effect.
- Youth whose cases are heard in Family Court will be detained or placed in OCFS-operated, OCFS-licensed, or ACS facilities (including Close to Home), as Juvenile Delinquents currently are.
- Adolescent Offenders who are detained pre-trial will be held in a specialized secure juvenile detention center for older youth, which will be certified and regulated by OCFS in conjunction with the state commission of correction. Judges have the discretion to order that Adolescent Offenders who are sentenced to less than a year serve such sentences in a specialized juvenile detention center for older youth.
- Adolescent Offenders who are sentenced to state imprisonment will be placed in an Adolescent Offender facility developed by the state with enhanced security operated by DOCCS, and managed by OFCS.

Sealing

- Anyone convicted of an eligible offense in an adult court may seek to have his/her record sealed after ten years from the imposition of the sentence or discharge from incarceration, whichever is latest. Violent felonies, sex offenses, and Class A felonies are not eligible offenses. In addition, sealing is only available for people who have no more than 2 convictions, one of which may be for a felony.
- The court will create a standardized form for a person to use to apply for sealing.

Raise the Age Implementation Task Force

- The Governor will appoint members of a Task Force to coordinate the implementation of these changes.
- The Task Force will issue a report on planning and implementation one year after the effective date (April 2018) and after an initial year of implementation (by August 2019).

Effective Dates:

- Sealing Provisions: 180 days after enactment (October 6, 2017).
- Raise the age for 16 year olds: 10/1/18.
- Raise the age for 17 year olds: 10/1/19.
- Sections related to state reimbursement to the counties for probation are effective 4/1/18.
- Sections related to reimbursement for detention and alternative to detention are effective 10/1/18.
- Elimination of state support for detained PINS will start 1/1/2020.

Youthful Offenders

- The Youthful Offender (YO) laws remain the same.