

Raise The Age Presentation
By Victor A. Civitillo
Senior Assistant County Attorney
Dutchess County Attorney's Office
845-486-2110

School Safety Seminar
Dutchess County BOCES
October 17, 2017

“Raise the Age” creates a new category of defendants who are 16 at the time they committed a felony (effective October 1, 2018) and 17 (effective October 1, 2019), called “Adolescent Offenders” (AOs). CPL 1.20(44).

Under the “Raise the Age” Legislation, Supreme Court/County Court Youth Part staffed by a Family Court Judge will hear:

- Felonies committed by AOs (and any misdemeanors charged as part of the same criminal transaction).
- Juvenile Offender (JO) cases (and non-JO felonies and misdemeanors charged as part of the same criminal transaction). CPL 722.10(1)
- A juvenile offender is a person who, while 13, 14 or 15 years old committed at least one felony listed in PL 10.00(18). These crimes are both age dependent and crime dependent.

- Family Court will hear JO and AO cases removed (transferred) from the Youth Part. FCA 301.2(1).
- Vehicle and Traffic Law misdemeanors, traffic infractions, and violations committed while a person was 16 or 17 will continue to be heard in local criminal courts. CPL 140.20(8)

- Family Court will hear (non-V & T) misdemeanors and any (non-V & T) violations as part of the same criminal transaction as the misdemeanor case committed by a person when he/she was 16 (effective October 1, 2018) and 17 (effective October 1, 2019) if not diverted by probation.
- Family Court will continue to hear all other juvenile delinquency cases where a person who while *under* the age of 16 and at least 7 committed an act constituting a misdemeanor or felony.

Removal Criteria

- Any AO case may be removed to Family Court on consent of the parties. *See* CPL 722.23(2)(iii)(e); CPL 722.23(1)(h)
- Subject to certain exceptions, AO cases will be removed to Family Court within 30 days unless DA files a written motion to prevent removal and court finds extraordinary circumstances. *See* CPL 722.23(1)(a), CPL 722.23(1)(d)

Removal Criteria (continued)

- Exceptions subject to more strict removal criteria and/or DA consent include Second Degree Murder, certain sex offenses, certain firearm offenses, offenses where a victim suffers “significant physical injury” and “violent felony offenses.” *See* CPL 722.21(5); CPL 722.23(2)

Local Correctional Facilities for Adolescent Offenders

- A 16 or 17 year old committed to the custody of the sheriff must be held in a specialized secure juvenile detention facility for older youth certified by OCFS and Commission of Correction.

CPL 510.15(1)

- Counties are responsible for detention of alleged/convicted adolescent offenders in a specialized secure detention facility for older youth certified by OCFS/Commission of Correction with specially trained staff. Said facility shall be jointly administered by the County's detention agency and the sheriff. County Law 218-a(6)

AO Sentencing (in general)

- An AO may not be sentenced to life in prison without parole. PL 70.00(5)
- The court shall sentence an AO to any sentence (other than above) authorized to be imposed on an adult defendant, but the court shall consider defendant's age in its discretion at sentencing. PL 60.10-a

Diversion Services

- Although the statute is not entirely clear, it appears that cases removed from Youth Part to Family Court will be eligible for diversion services. CPL 722.21(3)(b); CPL 722.21(4)
- Youth Part defendants (AO/JO) will be eligible for voluntary probation-based services or referrals, which may include alcohol, substance abuse, or mental health treatment. These services shall continue if case is removed to Family Court. CPL 722.00(1),(2)

Victims' Rights at Disposition in Delinquency Case

- Victim has the right to make a statement in court for disposition but...”[t]he victim shall *not* be made aware of the final disposition of the case.” FCA 350.3(4) (emphasis added)

Juvenile Delinquency Placements

- Placement with OCFS/DSS for up to 12 or 18 months may be extended until age 21 without respondent's consent if respondent was 16/17 at the time the crime was committed.

FCA 355.3(6)

- Designated Felony restrictive placement with OCFS (3 or 5 year) may be extended until age 23 without respondent's consent if respondent was 16/17 at the time the act was committed.

FCA 353.5(4)(d)

Removal Problem Under New Raise the Age Legislation

- A felony complaint based on hearsay is not legally sufficient to qualify as a juvenile delinquency petition, which must be based on non-hearsay depositions. Therefore, a felony complaint based on hearsay will be subject to dismissal upon its arrival in Family Court. The County Attorney is left to scramble to obtain a deposition or depositions and then move to attach non-hearsay deposition(s) at initial appearance in Family Court to prevent dismissal.

Solution: either amend FCA/CPL *or* police/DA must attach non-hearsay depositions to felony complaint prior to arraignment or prior to removal.

Custodial Interrogation

- Upon arresting AO or JO, police must notify parent, guardian or other person that he/she lives with that he/she *is in custody* and the location of where he/she is being detained. CPL 140.27(5)
- Custodial interrogation of 16/17 year old alleged AO or JO must take place at home of suspect or in a facility designated by OCA for such questioning. CPL 140.20(6)

Custodial Interrogation (continued)

- *If the parent/guardian/co-domiciliary is present* then defendant and that person must be advised of defendant's Miranda rights. CPL 140.20(6); 6(a)
- Factors at *Huntley* hearing will include:
 1. Reasonable period of time for questioning
JO/AO
 2. Defendant's age
 3. Presence/absence of parent/guardian
 4. Whether police complied with notification
requirement of parent/guardian

CPL 140.20(6); 140.27(5); 140.40(5)

- Juvenile Delinquency arrest made after business hours (when police are seeking detention) must be brought before the most accessible magistrate, *if any*, designated by the Appellate Division. FCA 305.2(4)(b)