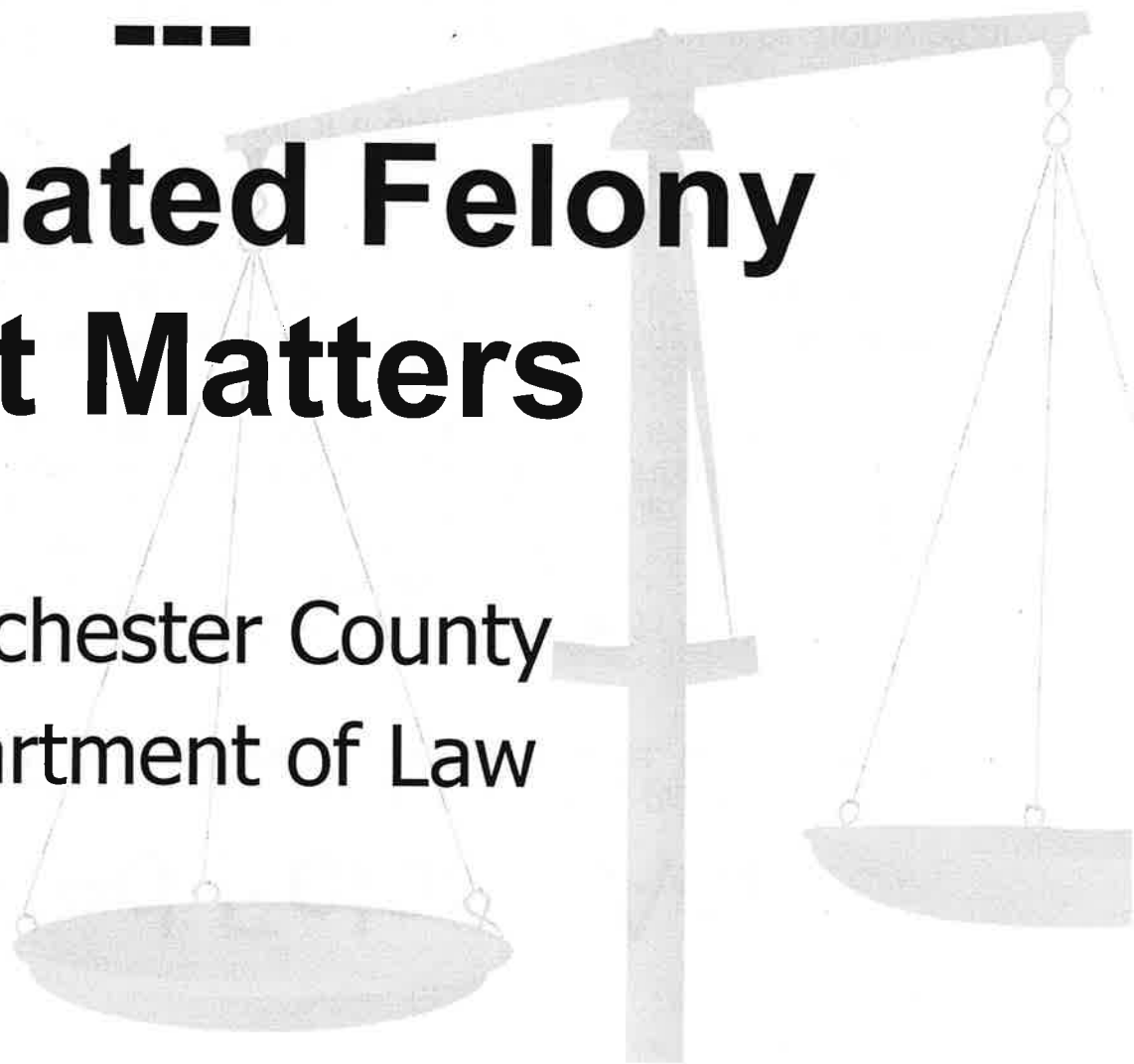


Raise the Age

Designated Felony Act Matters

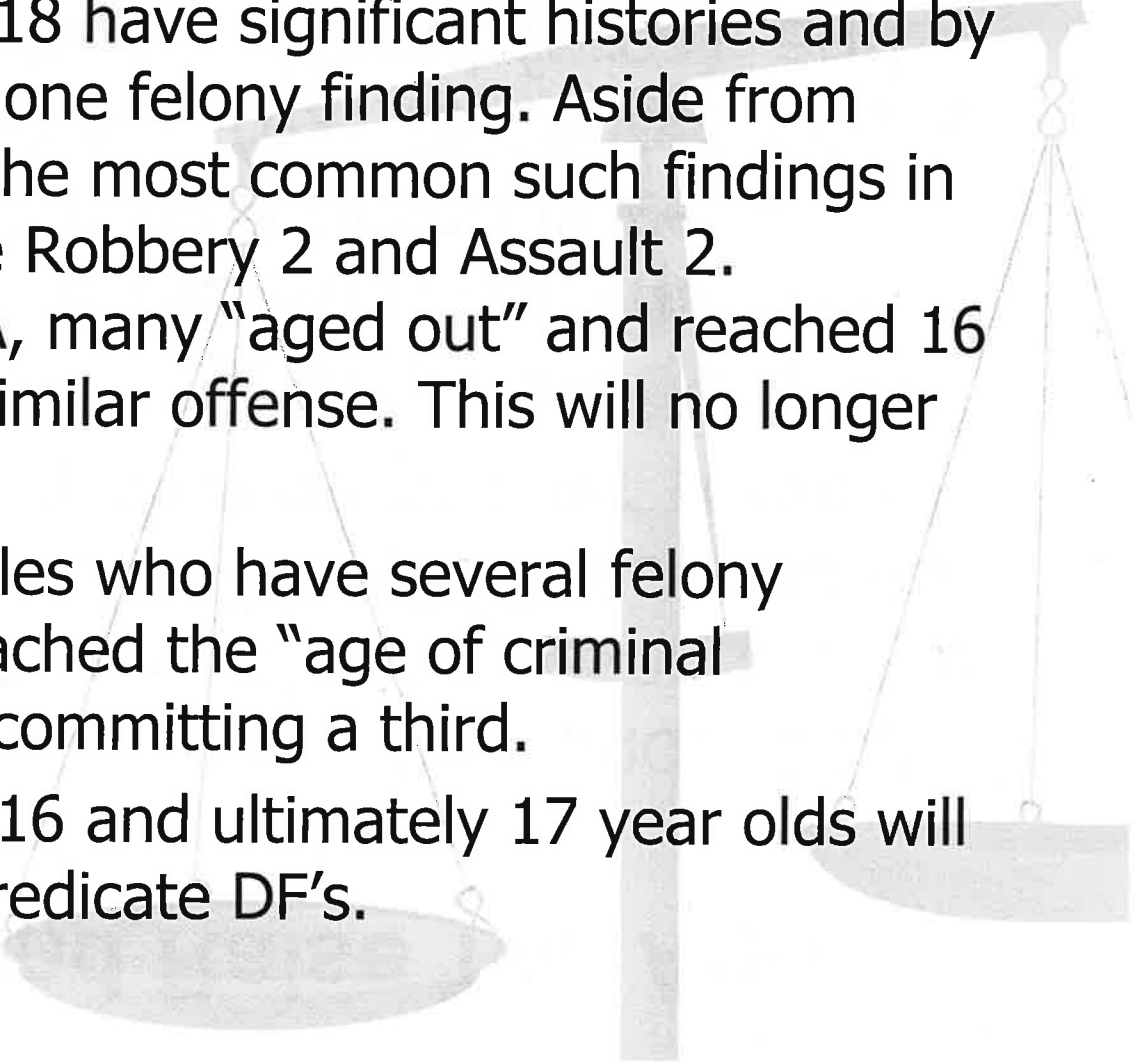
Westchester County
Department of Law



Designated Felony Act

- FCA § 301.2(8) defines a “designated felony act” - listing the various Penal Law sections that would be crimes if committed by an adult and qualify as the same, within respective age groups.
- Prior to October 1, 2018, this included Criminal Sexual Act 1, Assault 1, Arson 1, Kidnapping 1, Murder 1 and 2, Rape 1, Rob 1, etc., committed by a person 13, 14 or 15; Burglary 1 & 2, Rob 2 (injury or firearm), etc. committed by a person 14 or 15. As of the aforementioned date, the age now includes a person 16 and on October 1, 2019 will include 17-year-olds as well. Note, the DA’s office has original jurisdiction on Juvenile Offender (“JO”) matters (14 & 15 years of age) and we lose the DF if not removed.
- Robbery 2 or Assault 2 becomes a Designated Felony for 14, 15 and now 16-year-olds - if there was a prior finding of Robbery 2, Assault 2, or previous DF (not including burglary). The first finding predicates a second such charge as a DF.
- Where there are two prior findings by a court of any felony, regardless of the age of commission, they predicate any third felony - even if a grand larceny or the like.
- Under RTA all felony matters for 16 year olds start in the Youth Part. However, non-violent felony matters will transfer to family court, by way of Probation for potential adjustment, unless the DA’s file a motion within 30-days to keep them (unlikely, must show extraordinary circumstances).
- AO’s accused of violent felonies may have their cases transferred if the accused did not display a weapon, cause significant injury, or commit a sexual act. It is anticipated this will occur, as it often did on JO’ robbery cases prior to October 1, 2018.

Potential Impact

- Many JD's in our major cities like Yonkers and Mt. Vernon prior to October 1, 2018 have significant histories and by the age of 16 at least one felony finding. Aside from certain sex offenses, the most common such findings in this age group include Robbery 2 and Assault 2. However, prior to RTA, many "aged out" and reached 16 before committing a similar offense. This will no longer be the case.
 - Similarly, many juveniles who have several felony findings previously reached the "age of criminal responsibility" before committing a third.
 - Such cases, involving 16 and ultimately 17 year olds will likely result in more predicate DF's.
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Intent Behind Raise The Age

- To treat adolescents - with their undeveloped brains, relieve them of criminal responsibility and records – and the disabilities associated with the same, and provide greater services.
- Ironically, with predicate DF's now likely to increase, some juveniles who commit non-violent felonies such as a grand larceny taking from the person (ex: stealing a phone out of someone's hand without force), and previously would have had a good chance of an ACD in criminal court, may now face a designated felony act finding.

Westchester Arrests Among 16 – 17 Year Olds

WESTCHESTER ARRESTS AMONG 16-17 YEAR OLDS

Age at Crime	Top Arrest Category	Arrest Year				
		2013	2014	2015	2016	2017
16	Violent Felony	74	61	60	59	43
	Non Violent Felony	47	55	46	51	60
	Misdemeanor	297	206	208	173	176
	VTL	2	0	0	1	1
	Total	420	322	314	284	280
17	Violent Felony	78	60	65	51	63
	Non Violent Felony	72	71	78	82	64
	Misdemeanor	365	325	263	301	272
	VTL	13	7	7	7	4
	Total	528	463	413	441	403
TOTAL	Violent Felony	152	121	125	110	106
	Non Violent Felony	119	126	124	133	124
	Misdemeanor	662	531	471	474	448
	VTL	15	7	7	8	5
	Total	948	785	727	725	683

Source: DCJS, Computerized Criminal History File (as of 2/16/2018).



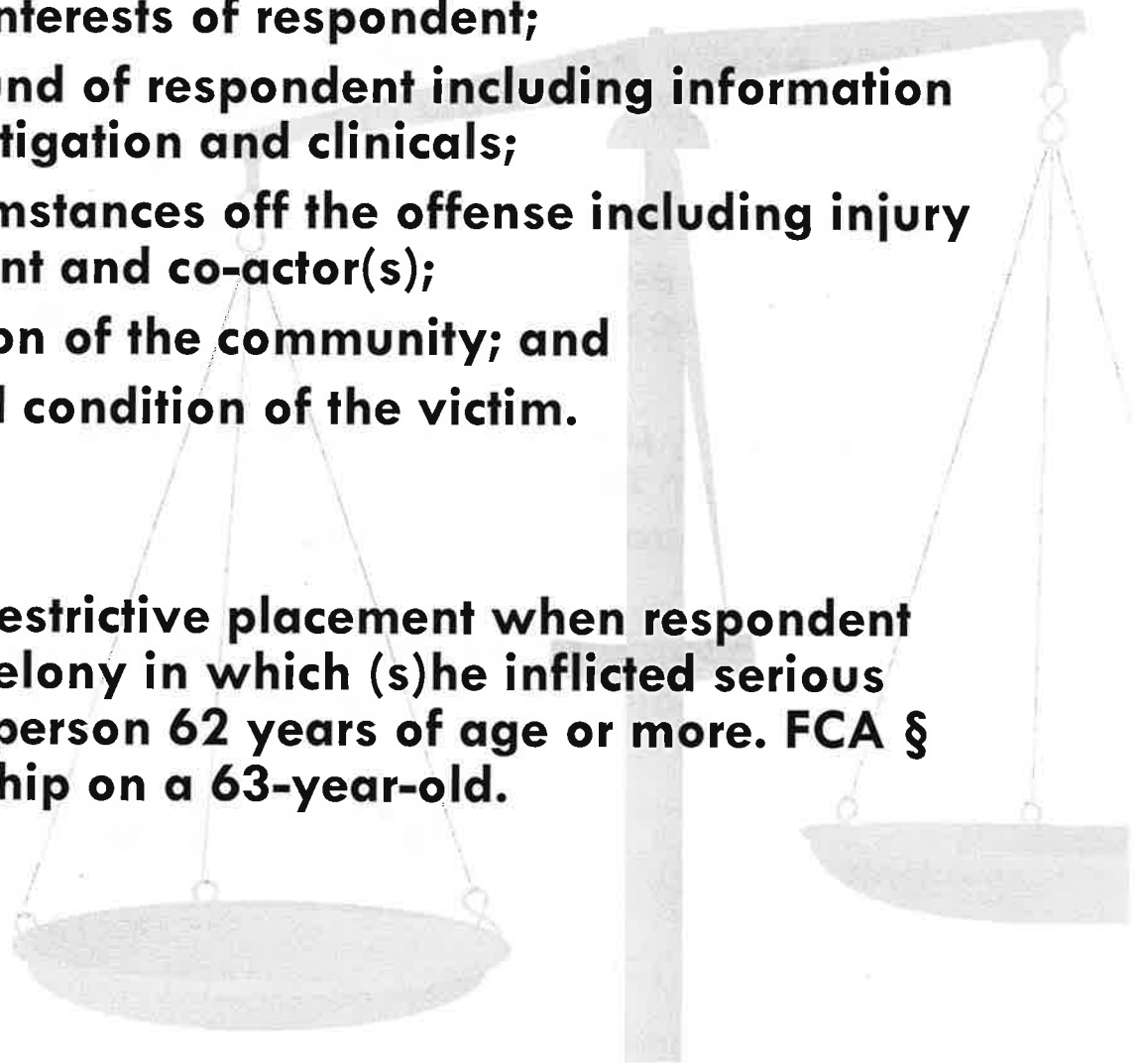
Outcomes

- No adjournment in contemplation of dismissal. FCA § 315.3(1).
- No adjustment by the Probation Department without written approval of the court. FCA § 308.1(3).
NOTE: THE PROBATION DEPARTMENT SHOULD IDENTIFY PRIOR FELONY FINDINGS AND DETERMINE IF PREDICATES EXIST - EVEN A THIRD NON-VIOLENT FELONY TRANSFER WILL BE A DF.
- Burns YO status.
- Disposition is governed by FCA § 353.5 not “least restrictive” under FCA § 352.2. *In re Michael R.*, 223 A.D.2d 465 (1st Dept. 1996).
- Potential for a three year restrictive placement, or five years on a class A designated felony act matter with OCFS.
- Respective placements allow secure facilities for mandated periods (6-12 months on non-class A felony and 12-18 months on class A felony), followed by Court-ordered residential facility for specified period and intensive community based supervision. RTA reduced maximum secure periods.
- No FCA § 355.1 motion permitted during first 12 months to modify, etc., other than motion to vacate pursuant to CPL on a Class A felony or 6 months on non-Class A felony.
- No step-downs during mandated secure period.
- No home visits during secure portion.
- EOP’s may extend placement to age 21 rather than 18 on a typical JD, without consent. If act was committed by respondent at 16 or older, to age 23. FCA § 353.5(4)(d).
- Restrictive placement may be ordered on a PROBATION VIOLATION. *Matter of Jermaine D.*, 29 A.D.3d 576, (2d Dept. 2006).

FCA § 353.5(2)(a) Factors

- The needs and best interests of respondent;
- Record and background of respondent including information from probation investigation and clinicals;
- The nature and circumstances of the offense including injury inflicted by respondent and co-actor(s);
- The need for protection of the community; and
- The age and physical condition of the victim.

The court **SHALL** order restrictive placement when respondent commits a designated felony in which (s)he inflicted serious physical injury upon a person 62 years of age or more. FCA § 353.5(3). Ex: Fractured hip on a 63-year-old.



Practice Pointers

- Petition must be prominently marked Designated Felony Act Petition and include certified copies of prior delinquency findings. FCA §311.1(5)
- However, where petition was prominently marked and specifics of prior findings were described in the same, including docket numbers, that was found to be sufficient. *In re Robert S.*, 240 A.D.2d 314 (1st Dept. 1997).
- Designated felony finding stricken and placement reduced from 5 years to 18 months where Presentment Agency failed to prominently mark the petition and attached certified copies of prior delinquency findings. *In re Warren W.*, 216 A.D.2d 225 (1st Dept. 1995).
- Even on removals, failure to prominently mark the same has resulted in dismissal of a Rob 1. *In re Stephan F.*, 274 A.D.2d 584, (2d Dept. 2000).
- What about non-violent felony transfers from the AO part? Must they too be prominently marked?

Practice Pointers (2)

- Prior predicate felonies must have been adjudicated - so no ACD's.
 - Felony findings from two different petitions consolidated into one disposition is fine. *Matter of In re Manuel R.*, 89 N.Y.2d 1043 (1997).
 - But obviously two felony findings on one prior petition does not predicate for purposes of three strikes.
 - An allocution to a designated felony must include the additional disabilities – restrictive placement, YO status, etc.
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