

# RAISE THE AGE IN NEW YORK

EVERYTHING YOU WANTED  
TO KNOW, BUT WERE  
AFRAID TO ASK

# RAISE THE AGE:

- Raise the Age legislation was signed into law on April 10, 2017.
- The law becomes effective for 16 year olds on October 1, 2018.
- The law becomes effective for 17 year olds on October 1, 2019.

# RAISE THE AGE:

- In addition to the current classifications of Juvenile Offenders (JO) and Juvenile Delinquents (JD), the law creates a new class of offender called an “Adolescent Offender.”
- The new terminology is necessary due to the different protections afforded to each group moving forward.
- An Adolescent Offender is a 16 or 17 year old who is charged with a felony.

# RAISE THE AGE:

- The law will change for 16-17 year olds in the following ways:
  - Parental Notification
  - Court Processing
  - Violations
  - Family Court
  - Youth Part of Adult Court
  - Facilities

# RAISE THE AGE:

- ❑ Projected Numbers
- ❑ New Process
- ❑ New Offender
  - Adolescent Offender
- ❑ New Court
  - Youth Part
- ❑ Confinement
- ❑ Local Costs



# RTA projected numbers for Westchester

**Table 1. Arrest & Case Processing Projections for 16/17 Year Olds ONLY**

<b>Westchester</b>	<b>Current System (2016)</b>	<b>Estimated Range at Full Raise the Age Implementation</b>
<b>Arrest Projections (16/17 year olds ONLY)</b> Total Felony Misdemeanor	 719 241 478	 450 – 650 175 – 275 300 – 400
<b>Case Processing Projections (16/17 year olds ONLY)</b> Arrests Proceeding in Youth Part Total Violent Felony Arrests Handled via Family Court Process Total Felony Misdemeanor Specialized Secure Juvenile Detention Facility Admissions Annual AO Detention Admissions Annual AO Sentenced Admissions	          	          40 – 70 30 – 70  450 – 650 125 – 225 300 – 400  50 – 90 5 – 25

# RAISE THE AGE FLOW CHART

## Non-criminal Violations



**Local Court**

<sup>1</sup>Family Court Judge presiding

## Misdemeanors



**Family Court**

## Non-violent Felonies

Starts in Youth Part (Criminal Court)<sup>1</sup>

Case automatically goes to Family Court if DA does not file motion to try to retain the case in Criminal Court within 30 days.

Case is presumptively removed to Family Court unless the DA files a motion in 30 days to prevent removal and shows extraordinary circumstances that warrant the case remaining in the criminal Youth Part.



## Violent Felonies

Starts in Youth Part (Criminal Court)<sup>1</sup>

Evaluated as part of a three-part test. If offense involves any one of the following, the case will remain in youth court:

- (1) Significant Physical Injury
- (2) Display of a Weapon
- (3) Sex Offenses

**Passes**   **Fails**

**Youth Part**  
(Criminal Court)

VTL criminal offenses go to Youth Part and cannot be removed to Family Court

# Three types of Offender Categories

- Juvenile Delinquent (JD) as of today
  - **Age:** Under 16 years-old at the time of the offense
  - **Alleged Crime:** Non JO Felony or misdemeanor
  - **Court:** Family Court
  - **Pre-trial detention:** Woodfield
- Effective Oct. 1, 2018, all misdemeanors under the age of 17 will be considered a JD.
- Effective Oct. 1, 2019, all misdemeanors under the age of 18 will be considered a JD.



# Three types of Offender Categories (cont.)

## ■ Juvenile Offender (JO)

- **Age:** 13 to 15 years-old at the time of the offense
- **Alleged Crime:** Select set of serious offenses:  
e.g. murder, manslaughter, rape, robbery 1
- **Court:** Youth Part of Superior (Criminal) Court
- **Pre-trial detention:** Existing local detention facilities licensed by OCFS
- The JO and the AO are treated the same with the respect to Police parental notification and questioning
- **Trial occurs before a Youth Part judge, under the new legislation.**

## Three types of Offender Categories (cont.)

- **Adolescent Offender (AO) – New category created by RTA**
  - **Age:** 16 or 17 years-old at the time of the offense
  - **Alleged Crime:** Felony, if convicted, current adult sentencing applies
  - **Court:** Youth Part of Superior (Criminal) Court
  - **Pre-trial detention:** New “specialized secure juvenile detention facilities for older youth” SSD
  - **Probation Service:** Eligible for voluntary case planning services prior to conviction

# Adolescent Offender Processing



# Pre-Adjudication Youth Process

- ❑ **Juvenile questioning rooms**, inspected and approved by the appropriate court administrator and usually located in police administrative offices, will be used for questioning youth who have been arrested
- ❑ **Youth may be brought to his/her home by police**, and with consent of the parent or legal guardian, be questioned there for a reasonable period of time
- ❑ **Parental notification of arrest will be required** for 16 and 17 year-olds, similar to what is now available for youth 15 years of age and under in Family Court

# Adolescent Offender Processing

- Youth Part accusatory instrument (felony complaint) will be filed in the Supreme/County Court Youth Part of the County where the crime occurred or where that court has jurisdiction. CPL 100.60
- JO and AO cases will be arraigned in Supreme/County Youth Court Part *if* Youth Part is in session. *CPL 140.27(3-a)*
- If Supreme/County Youth Part is *not* in session, AO/JO defendant must appear before the most accessible magistrate designated by the Appellate Division to act as a Youth Part to determine if defendant shall be detained. *CPL 140.27(3-a); CPL 722.20(1)*

# Pre-Adjudication Youth Process

- Parents must be notified when their children are arrested.
- Questioning must be completed with parental involvement and within an appropriate length of time.
- Questioning of the youth must take place in an age appropriate setting, that has been designated by the Chief Administrator of the Courts as a suitable place for the questioning of children.

## AFTER HOURS ARRAINGMENT

- ❑ **Parents are notified of arrest and that juvenile is being transported to Woodfield for an after-hours arraignment/PPD.**
- ❑ **If remanded, juvenile stays at Woodfield.**
- ❑ **If ROR, parent must be present.**
- ❑ **Bail for AO and JO, only.**

# Removal from Youth Part to Family Court

- NY CPL § 722.23. Removal of adolescent offenders to family court.
- Following the arraignment of a defendant charged with a crime committed when he or she was sixteen[with certain exceptions], the court **shall** order the removal of the action to the family court in accordance with the applicable provisions of article seven hundred twenty-five of this title



# Removal from Youth Part to Family Court

- *“unless, within thirty calendar days of such arraignment, the district attorney makes a motion to prevent removal of the action pursuant to this subdivision.”*
  - Burden is on the District Attorney’s Office.
  - motion shall be made in writing
  - upon prompt notice to the defendant
  - The motion shall contain allegations of sworn fact based upon personal knowledge of the affiant
  - It shall indicate if the district attorney is requesting a hearing.
  - The motion shall be noticed to be heard promptly.

## If the Motion is Granted

- NY CPL § 722.23.(g)

Notwithstanding any other provision of law, section 308.1 of the family court act shall apply to all actions transferred pursuant to this section provided, however, such cases shall not be considered removals subject to subdivision thirteen of such section 308.1. (Order of Removal)

# Adjustment

- **NY FCA § 308.1. Rules of court for preliminary procedure**
- **1.** Rules of court shall authorize and determine the circumstances under which the probation service may confer with any person seeking to have a juvenile delinquency petition filed, the potential respondent and other interested persons concerning the advisability of requesting that a petition be filed.

# Adjustment

- After the initial Juvenile Intake process, any youth's case, who was not eligible for Juvenile Diversion Adjustment, would be forwarded to the Presentment Agency, County Attorney, for consideration for formal prosecution. At that time, cases can be sent back to Probation, by the County Attorney's Office or the Court, with a request for Probation to reconsider Diversion.

# “Interest of Justice” Test

## (CPL 722.22(2))

In order to remove *ALL* JO and certain AO Felonies to Family Court, The Judge of the Youth Part will be required to find that removal would be in the interest of justice after considering the factors below (CPL 722.22(2)):

- Seriousness and circumstances of the offense
- Extent of harm
- Evidence of guilt (admissible or inadmissible)
- History, character, condition of defendant
- Purpose and affect of imposing an authorized sentence
- Impact of removal on safety or welfare of community
- Impact of removal on public confidence in criminal justice system
- Where appropriate, attitude of victim of the action
- Any other facts showing conviction would serve no useful purpose

# Adolescent Offender and Criminal Court Removal

## Standard Removal Process

The Order of Removal, together with those pleadings and proceedings other than the minutes of any hearing inquiry or trial, grand jury proceeding, or of any plea accepted or entered held in this action that has not yet been transcribed, are to be transferred with it and will be deemed to be a petition filed pursuant to the juvenile delinquency article containing all of the allegations required by [FCA].

# Adolescent Offender and Criminal Court Removal

## A Personal Note

- The Presentment Agency is limited to the Petition (in this case the Order of Removal)
- Each and every act must be included in the Order
- Do not assume we can get a lesser included crime  
(in short, “charge more stuff”)

# Adolescent Offender and Criminal Court Order of Removal

Requirements of the Order of  
Removal are defined by CPL  
article 725

- A formal *written* order
- If pre-trial (most are) it must specify the acts it is reasonable to believe the youth has committed



# Adolescent Offender and Criminal Court Order of Removal

## Requirements of the Order (cont)

Where Designated Felony Act charges are alleged, the Removal Order should be identified as a “**Designated Felony Order of Removal**”

Additionally, each specific DF charge must also be identified Matter of Warren W, 216 A.D.2d 225

# Adolescent Offender and Criminal Court Order of Removal

All pleadings and proceedings, including the removal minutes and the Grand Jury minutes must be transferred to the Family Court.

The *Judge* must sign the Order

A Clerk's signature is **NOT** sufficient

# AO Removal to Family Court – Special Situations CPL 722.21(5)

- To remove –  
Murder Second Degree (PL 125.25),  
Rape First Degree (PL 130.35(1))(by forcible compulsion),  
Criminal Sexual Act First Degree (by forcible compulsion), or an  
Armed Felony as defined in CPL 1.20(41)(a),  
the following are **required**:  
Interest of Justice finding *and*  
The Court must consider the following factors:
  1. Mitigating circumstances *or*
  2. Defendant's participation was minor *or*
  3. Possible deficiencies in proof

# 3 Types of Pre-Sentence Confinement

- New specialized secure

juvenile detention facilities: SSD

- Existing secure juvenile

detention facilities: Woodfield

- Existing non-Secure juvenile

detention facilities: Children's Village – Dobbs Ferry



# Specialized Secure Juvenile Detention Facilities

- New type of detention created by the RTA legislation that is reserved exclusively for AOs
- Will be jointly certified and regulated by OCFS and the State Commission of Correction (SCOC)
- These facilities will be locally administered:
  - Outside of New York City, counties may opt to have the local probation or social services department administer the program in conjunction with the local sheriff
- Not every county will be required to operate a facility, but all must have one available for use
- These facilities cannot be co-located with local jails

# Specialized Secure Juvenile Detention Facilities

- These facilities may be co-located with currently operating juvenile secure detention facilities, provided the following conditions are met:
  - AOs must be assigned to separate housing units from JDs and JOs
  - Facilities may share common spaces (e.g. cafeteria, medical, vocational and recreational) for AOs and JDs/JOs, but physical access between the populations must be prevented
  - Facilities may be allowed to share space for AOs, JDs, and JOs for educational purposes
  - Facilities must abide by all OCFS and SCOC regulations
- OCFS and SCOC have notified all sheriffs and juvenile detention agencies of this update
- OCFS and SCOC are actively working to promulgate regulations

# Specialized Secure Juvenile Detention Facilities

- **Pre - trial Detention:** AOs may be confined to a specialized secure detention facility while their criminal trial is pending
- **Post - Conviction Sentencing:** These facilities will also be a post-conviction sentencing option for AOs with a definite sentence of one year or less

