



New York State  
**Unified Court System**

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**To:** All Town and Village Judges and Clerks

**From:** Office of Justice Court Support

**Subject:** Raise the Age Implementation Guidelines

**Date:** September 21, 2018

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**Introduction**

Effective October 1, 2018, the age of criminal responsibility in New York State will be raised to 17 years of age.<sup>1</sup> Accordingly, any felony offenses or non-Vehicle and Traffic Law misdemeanors committed on or after October 1, 2018 by persons who have not attained their 17<sup>th</sup> birthday by such date will no longer be prosecuted in local criminal courts. This memo is designed to advise these Courts on which cases will still be prosecuted in the local criminal courts and how to address issues that may arise relating thereto.

**Adolescent Offenders Now Charged in Youth Part**

As of October 1, 2018, the Criminal Procedure Law now provides that 16-year-old defendants who are charged with committing a felony will be called Adolescent Offenders (AOs).<sup>2</sup> Adolescent Offenders will be prosecuted in the newly created Youth Parts of the County Court, which will be staffed by specially trained Family Court judges. Juvenile Offenders (JOs), defined in Criminal Procedure Law §1.20(42) as defendants who are 13, 14 and 15 years of age, charged with committing certain violent felony offenses, must also be arraigned and prosecuted in the Youth Part. Accordingly, effective October 1, 2018,

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<sup>1</sup> The age of criminal responsibility will be further increased to 18 years of age on October 1, 2019.

<sup>2</sup> Per CPL §1.20(44), "Adolescent offender" means a person charged with a felony committed on or after October 1, 2018 when he or she was sixteen years of age or on or after October 1, 2019, when he or she was seventeen years of age.

local criminal courts will lose jurisdiction to preside over cases involving AOs and JOs. City, Town or Village Courts must reject the filing of an accusatory instrument charging an AO or JO. While Courts should not advise law enforcement in relation to their legal responsibilities, after October 1, 2018, all cases charging a youth as an AO or JO must be heard in the Youth Part of the superior court or by an Accessible Magistrate, including applications to issue Orders of Protection. On October 1, 2019, the Raise the Age legislation applies to any defendant who is less than 18 years old at the time of the commission of the offense.

**Non-VTL Misdemeanors will now be charged as Juvenile Delinquents in Family Court**

As of October 1, 2018, all non-VTL misdemeanor offenses committed by 16-year-old persons are designated as Juvenile Delinquent offenses and must be prosecuted exclusively in Family Court, including any arraignment on the misdemeanor charges.<sup>3</sup> Local criminal courts lack jurisdiction to hear these cases and any effort to file such a case in City, Town or Village Court must be rejected. As local criminal courts lack the jurisdiction to arraign 16-year-old defendants charged with non-VTL misdemeanors, local criminal courts may not issue process or Orders of Protection on these cases.

However, local criminal courts will retain jurisdiction over VTL misdemeanors and VTL infractions, as well as "violations" as that term is defined in Penal Law §10.00(3),<sup>4</sup> committed by 16-year-old defendants.<sup>5</sup> In the event that a VTL misdemeanor, VTL infraction or violation accompanies a felony committed as part of the same criminal transaction, all charges must be filed in the Youth Part.<sup>6</sup> Moreover, an accusatory instrument charging a 16-year-old with a non-VTL misdemeanor, which will normally be heard in family court as a juvenile delinquency case after October 1, 2018, will also go to Youth Part if the misdemeanor arises from the same criminal transaction as a charged felony. Thus, stand-alone VTL offenses and violations are heard in local criminal court; stand-alone non-VTL misdemeanors are filed in Family Court; and any of these charges, if connected to a charged felony as part of the same criminal transaction, must be filed in

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<sup>3</sup> Family Court Act §301.2(1)

<sup>4</sup> "Violation" means an offense, other than a traffic infraction, for which a sentence to a term of imprisonment of fifteen days cannot be imposed (e.g., PL §240.20 Disorderly Conduct, PL §140.05 Trespass, PL §221.05 Unlawful Possession of Marihuana, etc.)

<sup>5</sup> Penal Law §30.00(3)

<sup>6</sup> Penal Law §30.00(3)(d)(i)

Youth Part or before an Accessible Magistrate if the Youth Part is unavailable. However, there is no such companion provision for non-VTL misdemeanors, which must be filed in Family Court and VTL misdemeanors against 16-year-old defendants, which must be filed in local criminal courts. Thus, even if arising from the same criminal transaction, cases against 16-year-old defendants may be filed in both Family Court and local criminal courts. For instance, a 16-year-old defendant charged with Driving While Ability Impaired by Drugs, a VTL misdemeanor, could be properly charged in a local criminal court; a companion charge of Criminal Possession of a Controlled Substance in the Seventh Degree, a Penal Law misdemeanor, could be properly charged as a Juvenile Delinquent offense in Family Court, even if arising from the same criminal transaction.

Importantly, the age of the defendant at the time of the commission of the offense controls which law applies. It is imperative, therefore, for the Courts to ascertain the defendant's age as of the date that the offense was alleged to have been committed to determine whether the Court has jurisdiction to take any action, including the conducting of an arraignment.

#### **Accessible Magistrates**

The Raise the Age (RTA) legislation requires that an Accessible Magistrate be available to act in place of the Youth Part when the Youth Part Court is not in session. Certain City, Town and Village Justices may be designated as Accessible Magistrates by the Presiding Justice of the respective Appellate Departments, to perform arraignments and to recall warrants of AOs and JOs, when the Youth Part is not in session, and to perform Pre-Petition Detention Hearings on JDs when Family Court is not in session.<sup>7</sup> Specialized training is required for Accessible Magistrates before they are qualified to act. Accessible Magistrates, who are Town or Village Judges, are reminded that there is no need to enter the case information into their CourtRoom Program when performing as an Accessible Magistrate, but merely to transmit the information to the Youth Part or Family Court, as appropriate.

#### **Young Defendants Require Special Detention Housing**

Criminal Procedure Law §510.15 may now require that young defendants be housed

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<sup>7</sup> Criminal Procedure Law §722.10(2)

in detention facilities separate from older defendants. Securing orders should direct that such defendants be committed to the care and custody of the County Sheriff and clearly indicate the defendant's age to facilitate appropriate placement.

### **Conclusion**

The Raise the Age legislation significantly changes the procedures used to adjudicate cases involving young defendants. Effective October 1, 2018, 16-year-old defendants charged with felonies will be designated as Adolescent Offenders and will be prosecuted in Youth Parts, along with all youths designated as Juvenile Offenders. By October 1, 2019, the law will designate 17-year-old youths charged with felonies as AOs to be prosecuted in Youth Parts. While these defendants may still be arraigned on behalf of Youth Part by an Accessible Magistrate, the local criminal courts will no longer have jurisdiction over these cases. Likewise, as of October 1, 2018, 16-year-old defendants who are charged with non-VTL misdemeanors will be prosecuted as Juvenile Delinquents in Family Court, to be followed by 17-year-old defendants similarly charged as of October 1, 2019.

A final note, the Raise the Age legislation does not affect the Youthful Offender law. Accordingly, cases that are adjudicated in local criminal courts, including 16-year-old and 17-year-old defendants charged with VTL misdemeanors, remain eligible for Youthful Offender adjudication under Article 720 of the Criminal Procedure Law. Similarly, defendants who are 18 years old at the time of the commission of an offense will continue to have their cases adjudicated in local criminal courts and will remain eligible for Youthful Offender adjudication.

As always, please contact the Office of Justice Court Support for additional information.