



Guide to the YOUTH PART OPERATIONS UNDER RAISE THE AGE



- **Youth Parts have been created, in each county, as part of the Superior Court, Criminal Term [CPL § 722.10(1)]**
- **Youth Parts have exclusive jurisdiction over all felonies committed by Adolescent Offenders (16-year-olds (effective 10/1/18 and 17-year-olds (effective 10/1/19) and Juvenile Offenders.**
- Youth Part is part of the Superior Court, but it can be physically situated in any court: Supreme/County Court; Family Court, or City/District Court.
- Youth Parts will be open, or at least will be available, during regular court hours.
- Felony complaints for both **Juvenile Offenders** (13, 14 and 15-year-olds) and **Adolescent Offenders** (16- (effective 10/1/18) and 17- (effective 10/1/19) year-olds) will be filed with and arraigned in the Youth Part of Superior Court, not in the local criminal courts, with the exception of after-hour arraignments by Accessible Magistrates.
- **Bail:** all options available pursuant to CPL § 520.10 are applicable to AOs and JOs.
- **Presumption** against bail and detention for Adolescent Offenders charged with non-violent felony offenses. CPL § 722.23(1)(f)
- **Presumption** in favor of removal for Adolescent Offenders charged with non-violent felony offenses. CPL § 722.23(1)(a)
- Only the Youth Part is statutorily authorized to remove an Adolescent Offender and Juvenile Offender case to Family Court.
- Under RTA law, AOs and JOs are eligible for voluntary risk and needs assessment by the Department of Probation.
- In NYC Probation will have an on site presence in the Youth Parts: Individualized personalized plans, "one size fits one."
- **ONYC: Probation will be present in the Youth Parts in 6 Counties: Erie, Monroe, Onondaga, Westchester, Nassau and Suffolk, and will be available in all other counties.**
- The Raise the Age law mandates that as of October 1, 2018, all JO cases must be heard exclusively in the Youth Part. Any pending JO cases, even if the crimes were committed prior to October 1, 2018, should be transferred to the Youth Part.
- Adolescent Offender and Juvenile Offender cases that remain in the Youth Part are criminal actions unless they are removed to Family Court.
- AO and JO cases that remain in the Youth Part are entitled to any problem-solving/treatment options available to adult defendants.
- The Youth Part Judge may assign an attorney for the child (AFC) in adolescent offender cases that are removed to Family Court-Probation Intake. The Attorney must however be a member of the Appellate Division AFC panel or a staff attorney of an institutional provider that has contracted with OCA to provide AFC services.

"Raise the Age": Phased Implementation

In short, the law raises the age of both juvenile and criminal responsibility from 16 to 17 in 2018 and then from 17 to 18 in 2019.

Phase 1: October 1, 2018: RTA law took effect for 16-year-olds.

Phase 2: October 1, 2019: RTA law takes effect for 17-year-olds.

Age on date of the incident/crime determines designation as Juvenile Delinquent, Juvenile Offender or Adolescent Offender.

Who Presides in Youth Part? Exclusive Jurisdiction

CPL § 722.10(1): Judges presiding in the Youth Part shall be Family Court Judges and Acting Family Court Judges

CPL § 722.10(2): "Accessible Magistrates" shall be designated by the Presiding Justice of the Appellate Division in each department, to handle certain first appearances of AOs and JOs when the Youth Part is not in session.

Both Youth Part Judges and Accessible Magistrates must receive training in specialized areas, including but not limited to: specialized training in juvenile justice, adolescent development, custody and care of youth, and effective treatment methods for reducing unlawful conduct by youths.

"First Appearance" before the Accessible Magistrate is an Arraignment. (CPL § 1.20(9); CPL § 722.10(2); CPL § 180.75(1);

Accessible Magistrates will make preliminary detention or release

Three Categories of Offenders: Adolescent Offender, Juvenile Offender and Juvenile Delinquent

Adolescent Offender (AO): CPL § 1.20(44) and PL § 30.00(3):

- **AGE:** 16 (Oct 1, 2018) or 17 (Oct 1, 2019) at the time of offense
 - **ALLEGED CRIME:** Felony (felony may be accompanied by a non-VTL misdemeanor and/or violation)
 - **ORIGINATING COURT:** Youth Part of Superior Criminal Court.
 - Defendants in Youth Part will either be AOs or JOs, but upon transfer to Family Court, they become JDs.
- Juvenile Offender (JO): Definition of Infancy [PL § 30.00(2)]. [Compare, CPL § 1.20(42) and PL § 10.00(18)].**

- **13, 14 or 15-year-olds:** Murder 2nd (PL § 125.25[1] Intentional Murder; [2] Depraved Indifference Murder; [3] Felony Murder, provided that underlying crime for the murder charge is one for which such person is criminally responsible or such conduct as a Sexually Motivated Felony (PL § 130.91).
- **14- or 15-year old:** Kidnapping 1st (PL § 135.25); Arson 1st or 2nd (PL §150.20 and §150.15); Assault 1st (PL § 120.10 [1] and [2]); Manslaughter 1st (PL § 125.20); Rape 1st (PL § 130.35[1] and [2]); Criminal Sexual Act 1st (PL § 130.50[1] and [2]); Aggravated Sexual Abuse 1st (PL § 130.70); Burglary 1st or 2nd (PL § 140.30 and § 140.25[1]) Robbery 1st or 2nd (PL § 160.15 and § 160.10[2] (a) and (b); Criminal Possession of a Weapon 2nd (PL § 265.03-Possession on school grounds only); Attempted Murder 2nd and Attempted Kidnapping 1st, or such conduct as a Sexually Motivated Felony (PL § 130.91).

Juvenile Delinquent (JD): FCA §301.2(1)

- Juvenile Delinquency definition amended to include 16- and 17-year-olds.
- Over 7 and Under 16- charged with a non-JO felony or a misdemeanor.
- 16- (effective 10/1/18) or 17-year olds (effective 10/1/19)- charged with a Penal Law misdemeanor.
- 16- (effective 10/1/18) or 17-year olds (effective 10/1/19)- charged with a felony AND removed to Family Court from the Youth Part.
- JD cases are exclusively heard in Family Court.
- Adolescent Offenders under the age of 21 at time of sentence, who are sentenced to a term of imprisonment in excess of one year, must be committed to the NYS Department of Corrections & Community Supervision (DOCCS).

Sight and Sound Separation Requirements

- Adolescent Offenders and Juvenile Offenders may not be commingled with adult offenders in police, court, detention or placement facilities.
- JOs and AOs may be charged with a co-defendant who are "adults"/adults.
- RTA confers **exclusive jurisdiction over Adolescent Offenders and Juvenile Offenders to the Youth Part**, but does **not** prohibit the Youth Part from presiding over an adult who is charged jointly or separately.
- RTA does **not** mandate separation by sight and sound in a courtroom setting for purposes of a calendar call, conference, hearing or trial.

Jurisdiction: Local Criminal Court

VTL misdemeanors, traffic infractions and violations will continue with the traditional criminal court process for 16- and 17-year-olds after RTA.

Parental Notification

Arresting agency is required to notify parents of AOs and JOs arrested for crimes.

At the arraignment, the Court should inquire if:

1. Arrest notifications were made?
2. Parents/legal guardians are present?
3. If no notifications were made, court should attempt to notify at arraignment proceeding.
4. If parents were notified, but are not present, court should wait a reasonable period of time for parents to appear, but it should not prevent the Court from proceeding.

Video Recording of Custodial Interrogation CPL §60.45

CPL § 60.45(3) and FCA § 344.2 mandate video recording of custodial interrogations by public servants at "detention facilities" for certain enumerated serious crimes.

The entire interrogation must be recorded, including the Miranda Warnings and any waiver.

CPL § 60.45(3)(c) sets forth non-exhaustive list of "Good Cause" grounds for not recording the interrogation.

Determination to suppress may not be based solely upon such failure to record.

Pre-Trial Detention

- Juvenile Offender: Detention facility must be certified by Office of Children and Family Services (OCFS) as a juvenile detention facility for the reception of children.
- Adolescent Offender: Detention facility must be certified by OCFS in conjunction with the State Commission on Corrections as a specialized secure juvenile detention facility for older youth.
- 16-year-olds who are in custody on a case prior to 10/1/18, or who are charged as adults after 10/1/18 must be housed in Specialized Secure detention facilities for older youth, if a new securing order is issued. CPL § 510.15

Removal to Family Court of Adolescent Offenders and Juvenile Offenders

- Non-violent felony charges against Adolescent Offenders must presumptively be removed to the Family Court unless the prosecutor has demonstrated "extraordinary circumstances."
- Presumption in favor of removal does not apply to non-drug-related Class A felonies, violent felonies, or Juvenile Offenders.
- Presumption in favor of removal does not apply to Juvenile Offenders, as all Juvenile Offender crimes are designated felonies.
- Misdemeanors arising under the VTL may not be removed.
- Once the Criminal Case is Removed to Family Court-Probation Intake: Upon application of the presentment agency and for good cause shown, the Youth Part Judge, acting in his/her capacity as a Family Court Judge may, where appropriate, issue a Temporary Order of Protection. (FCA § 304.2).

As an Accessible Magistrate or a Youth Part Judge, What are my options on release or bail?

All options available as per Criminal Procedure Law;

Presumption against bail and detention for adolescent offender

Starting Point: Least restrictive form to assure return to Court?

- See CPL § 520.10 for forms of bail
- Upon removal, the Youth Part Judge acting in his/her capacity as a Family Court Judge may issue a new securing order to pursuit to FCA § 320.5

Authorized forms of Bail/Bail bonds CPL §520.10:

- | | | |
|--------------------------------------|--------------------------------|-------------------------------|
| 1. partially secured surety bond | 5. insurance company bail bond | 9. secured appearance bond |
| 2. unsecured surety bond | 6. ROR | 10. Third party release |
| 3. cash bail | 7. ROR with conditions | 11. unsecured appearance bond |
| 4. partially secured appearance bond | 8. secured surety bond | 12. credit card |

What are the traditional factors to be considered regarding detention? CPL §510.30

- | | |
|--|--|
| Principal's character, reputation, habits and mental condition | VI. Previous record of responding to court, if any |
| Employment and financial resources | VII. If DV case, record of violation of OP and history of gun possession |
| Family ties and length of residence in the community | VIII. Weight of evidence |
| Criminal record, if any | IX. Sentence which may be imposed upon conviction |
| Record as JD, if any; record of printable open cases, or YO | |

Sentencing Considerations

Court Must Take Youth's Age into consideration when imposing sentence upon an Adolescent Offender. (PL § 60.10-a).

Adolescent Offenders are subject to the Adult sentencing scheme.

AOs and JOs, if eligible, may receive Youthful Offender Treatment. (See, CPL § 720.10(2)(a), [b] and [c]).

- Court should be mindful to make an appropriate record regarding Youthful Offender Treatment. (See, People v. Rudolph, 21 N.Y.3d 497 [2013]).
- If convicted, both AOs and JOs will have a criminal conviction, unless afforded Youthful Offender Treatment.

Graduated Responses

Judicial Considerations: Positive Behavior:

Attend all court appearances
Attend and participate in court-mandated programming
Continued or improved compliance with court-mandated curfew
Continued or improved compliance with court-mandated area/association restrictions
Improvements in school attendance and/or participation/conduct
Academic achievements
Pursuit of employment
Workforce achievements
Continued or improved engagement in prosocial behaviors/activities
Continued or improved engagement with positive health/mental health practices
Continued or improved healthy family functioning

Possible Court Responses:

- Recognition and praise by the Judge
- Certificate of achievement
- Public display of youth's work
- Judge to visit youth's program
- Order of case called
- Decreased court appearances
- Curfew adjustment
- Area/association restriction adjustment
- Reduced program mandate
- Communication from Court to youth's service provider to recommend a program-appropriate incentive be delivered

Judicial Considerations: Negative Behavior:

- Missed court appearances
- Noncompliance with program mandate
- Noncompliance with curfew mandate
- Noncompliance with area/association restrictions

- Dishonesty
- Inappropriate behavior/non-engagement
- Unexcused school absences
- Suspension or expulsion from school
- Tampered, missed, or positive drug test
- New offense (re-arrest)

Potential Sanctions for Negative Behavior:

- Reprimand from the Judge
- Essay presented to the Judge
- Assigned reading or video viewing
- Increased court appearances
- Area/association restrictions
- Modify program mandate
- Modify curfew
- Mandate community service
- Meeting with youth and parent/guardian
- Placement on electronic monitoring
- Bail or Remand

Guide to the JUVENILE OFFENDER LAW & REMOVALS UNDER RAISE THE AGE

Juvenile Offender (JO): Definition of Infancy [PL § 30.00(2)]. [Compare, CPL § 1.20(42) and PL § 10.00(18)].

- **13, 14 or 15-year-olds:** Murder 2nd : PL § 125.25 (1) Intentional Murder; PL § 125.25(2) Depraved Indifference Murder; and PL § 125.25(3) Felony Murder, provided that underlying crime for the murder charge is one for which such person is criminally responsible or such conduct as a Sexually Motivated Felony (PL § 130.91).
- **14 or 15-year-old:** Kidnapping 1st (PL § 135.25); Arson 1st or 2nd (PL § 150.20 and § 150.15); Assault 1st (PL § 120.10(1) and (2)); Manslaughter 1st (PL § 125.20); Rape 1st (PL § 130.35(1) and (2)); Criminal Sexual Act 1st (PL § 130.50(1) and (2)); Aggravated Sexual Abuse 1st (PL § 130.70); Burglary 1st or 2nd (PL § 140.30 and § 140.25(1)) Robbery 1st or 2nd (PL § 160.15 and § 160.10(2)(a) and (b)); Criminal Possession of a Weapon 2nd (PL § 265.03-Possession on school grounds only); Attempted Murder 2nd and Attempted Kidnapping 1st, or such conduct as a Sexually Motivated Felony (PL § 130.91).
- Juvenile Offender definition remains unchanged by the Raise the Age Legislation.
- Juvenile Offenders are eligible for voluntary case planning through the Department of Probation. (See, CPL § 722.00).
- Youth Part has exclusive jurisdiction over **ALL** Juvenile Offender cases, including cases pending prior to October 1, 2018. (See, CPL § 722.10(1)).
- The Raise the Age law mandates that as of October 1, 2018, all JO cases must be heard exclusively in the Youth Part. Any pending JO cases, even if the crimes were committed prior to October 1, 2018, should be transferred to the Youth Part.
- Joinder: CPL § 200.20(6): where indictment charges at least one jurisdictional offense, additional non-jurisdictional offenses may be included provided they:
 1. are based upon the same criminal transaction or
 2. proof of one offense is admissible as proof of the other
- When Youth Part is not in session (after hours, weekends or holidays), JOs must be arraigned before accessible magistrates.

Juvenile Offender Sentencing Chart

Classification of Crime	Minimum Term of Imprisonment	Maximum Term of Imprisonment
Class A Felony: Murder 2 Intentional Depraved Indifference Felony Murder	7 ½ to 15 7 ½ to 15 5 to 9	Life Life Life
Class A Felony: Arson 1	4	12
Class A Felony: Kidnapping 1	6	15
Class B Felony	1/3 maximum	10 *But not less than 3*
Class C Felony	1/3 maximum	7 *But not less than 3*
Class D Felony	1/3 maximum	4

- Sentencing Scheme Remains Unchanged by the Raise the Age Legislation.
- **PL § 70.05 Sentence of Imprisonment for Juvenile Offender:** must be indeterminate term of imprisonment, unless the Court grants Youthful Offender treatment.
- **PL § 60.00 and § 60.10** govern the provisions and authorized dispositions for Juvenile Offenders.
- **PL § 60.20(2):** Juvenile Offender conviction may serve as predicate felony for a multiple felony offender sentence.
- **PL § 70.30(1)(f): Consecutive Sentences & Aggregate Maximum Sentences:**
- Non-Class A Felony: Aggregate maximum term of consecutive sentences committed before age 16 = ten years.
- Class A Felony (not Murder): Aggregate maximum = 15 years.
- Where the aggregate maximum has been reduced, the aggregate minimum = ½ the reduced maximum.
- **Detention:** Sentence imposed upon Juvenile Offender must be served in a "secure" detention facility. Therefore, if there is a prior Family Court placement, the Juvenile must serve the JO sentence first.
- **Juvenile Offenders and mandatory Surcharges: PL §§ 60.10 & 60.35:** JO w/o youthful offender status may be liable for surcharges. (See People v. Lofton, 132 AD3d 1242 (4th Dept. 2015), rev'd other gds 29 NY3d 1097 (2017)). JO given YO status, crime victim assistance may be waived if hardship proven CPL 420.35(2). YO not liable for DNA or sex offender registration fee or supplemental sex offender fee.

Who may request removal?

Defendant's Motion: CPL § 722.20(5) - the defendant may move to remove the action to Family Court pursuant to CPL § 722.22.

- **DA's Motion:** CPL § 722.20(4) - the District Attorney may move for removal at anytime.
- **Court sua sponte:** CPL § 722.22(1) - after arraignment on indictment.

Defendant's Request for Removal: Interests of Justice CPL § 722.20(5)

Upon motion of the defendant for removal of **Juvenile Offender** matter, the Court may grant the application if:

Defendant has not waived hearing pursuant to CPL § 722.20(2);

Hearing has not been commenced pursuant to CPL § 722.20(3);

- The Court has considered the nine factors enumerated in CPL § 722.22(2); and
- Court determines removal is in the interests of justice.
- If the court denies defendant's application for removal, no further application for removal can be made by the defendant.

People's Request for Removal: Interests of Justice CPL § 722.20(4)

Where the prosecutor consents to removal of a Juvenile Offender case, the Youth Part **must** consider the nine factors specified in CPL § 722.22(2) and **shall** remove the case to Family Court if it determines that it would be in the interests of justice to do so.

- **Hearing:** Any evidence not privileged may be introduced, and if the defendant testifies, the testimony is inadmissible in subsequent proceedings except for impeachment.

Motion Practice

CPL § 210.45(1),(2) apply to CPL § 722.22(3) motion.

Motion must be in writing.

Must contain sworn allegations of facts upon personal information or upon information and belief.

- Upon reasonable notice to opposing party.
- Opposing party may respond.
- Any evidence not privileged may be introduced. (See, CPL § 722.22(4)).

CPL § 722.22(2): Interests of Justice: Nine Factors to Consider

1. Seriousness of the offense
2. Extent of harm
3. Evidence of guilt
4. History and Character of the defendant
5. Purpose and Effect of imposing a sentence
6. Impact of Removal on safety and welfare of the community
7. Impact of Removal on public confidence
8. Where appropriate - attitude of complainant
9. Other relevant factors

Interests of Justice and Mitigation: CPL § 722.20(4)

Where a Juvenile Offender is charged with: Murder 2°; Rape 1°; Criminal Sexual Act 1°; or in armed felony, the Court may only remove the matter when the:

- A) Prosecution requests,
- B) Court finds Interests of Justice and
- C) Court finds:

1. Mitigating circumstances bearing directly upon the manner in which the crime was committed; or
2. Relatively minor participation of the accused in the crime, although not sufficiently minimal as to constitute a defense; or
3. Possible deficiencies in proof of the crime.

Court's Determination (CPL § 722.22) & Removal Order (CPL Article 725)

Court Orders Removal: It shall state on the record the factor or factors upon which its determination was based. The Court must give reasons for removal in detail and not in conclusory terms. (CPL § 722.22[5][a]).

If DA consents, must state reason on the record. (CPL § 722.22[5][b]).

Upon Removal: The criminal action is terminated and sealed pursuant to CPL § 725.10(2) and CPL § 725.15.

- Pursuant to CPL § 725.05(8): All pleadings and proceedings in the action, or a certified copy of same, shall be transmitted to the Family Court, including but not limited to: minutes of any hearing, inquiry or trial held in the action; minutes of any grand jury proceeding; or minutes of any plea accepted and entered.

Miscellaneous Facts:

- **Juvenile Offenders are eligible for Youthful Offender treatment.** Court must make a Youthful Offender determination at sentencing, in every case, where the defendant is eligible, regardless of whether defendant has asked for YO or whether YO was part of the plea bargain. **People v. Rudolph** 21 N.Y.2d 497 (2013).
- **CPL § 720.10(2)(c):** YO is not available if the defendant's juvenile delinquency adjudication is for a "Designated Felony Act" as defined in FCA § 301.2(8).
- **Juvenile Offender** will have a criminal conviction unless afforded Youthful Offender Treatment.
- **Sentence of Imprisonment for Juvenile Offender with YO Treatment:** PL § 60.02: Court must impose a sentence authorized for a Class E felony which includes the following: (1) **Probation or "Split Sentence"** (Probation and Imprisonment); (2) **Conditional Discharge or Unconditional Discharge;** (3) **Fine,** or (4) **Imprisonment:** Definite sentence up to 1 year, or an indeterminate term with a minimum equal to one third (1/3) of the maximum sentence. Maximum = 1 1/3 to 4. **Youthful Offender:** Consecutive terms cannot exceed the authorized maximum term of imprisonment (4 yrs) for Class E Felony.
- **Detention:** JOs may not be commingled with adult offenders in police, court, detention or placement facilities.
- **Detention facility** must be certified by OCFS as a juvenile detention facility for the reception of children.
- **Sentencing:** Committed to secure OCFS facilities in accordance with PL § 70.20(4) (a). JO may be held in OCFS secure facilities until age of 23, subject to transfer to the NYS Department of Corrections & Community Supervision (DOCCS) pursuant to Executive Law §§ 507-a(2)(a-1) and 508.

Guide to the RAISE THE AGE LAW & REMOVALS OF ADOLESCENT OFFENDER CASES

- **Youth Parts** have been created in each county as part of the Superior Court, Criminal Term (CPL § 722.10[1]).
- **Youth Part** has exclusive jurisdiction over all felonies committed by youths 16 (10/1/18) and 17 (10/1/19) years of age and all Juvenile Offenders (Ages 13 to 15).
- Felony complaints for **Adolescent Offenders (AOs)** (16- and 17-year-olds) will be filed with and arraigned in the **Youth Part of Superior Court**, not in the local criminal courts (with the exception of after-hour arraignments by Accessible Magistrates).
- **All AO matters** must be adjudicated in Youth Parts, including: **removals; pleas; hearings and trial.**
- **Bail:** all options available pursuant to CPL § 520.10 are applicable to Adolescent Offenders and Juvenile Offenders (JOs).
- **Presumption** against bail and detention for Adolescent Offenders charged with non-violent felony offenses. (CPL § 722.23[1][f]).
- **Presumption** in favor of removal for Adolescent Offenders charged with non-violent felony offenses. (CPL § 722.23[1][a]).
- Only the Youth Part is statutorily authorized to remove an Adolescent Offender case to Family Court.
- Under RTA law, AOs and JOs are eligible for voluntary risk and needs assessment by the Department of Probation.
- CPL § 200.20(6): where indictment charges at least one jurisdictional offense, additional non-jurisdictional offenses may be included provided they:
 - 1) Are based upon the same criminal transaction or;
 - 2) Proof of one offense is admissible as proof of the other.

Adolescent Offender

- **Adolescent Offender:** CPL § 1.20(44) and PL § 30.00(3):
- **AGE:** 16 (Oct 1, 2018) or 17 (Oct 1, 2019) at the time of offense
- **ALLEGED CRIME:** Felony (felony may be accompanied by a non-VTL misdemeanor and/or violation)
- **ORIGINATING COURT:** Youth Part of Superior Criminal Court.
- Defendants in Youth Part will either be AOs or JOs, but upon transfer to Family Court, they become Juvenile Delinquents (JDs).

Parental Notification

Arresting agency is required to notify parents of AOs and JOs arrested for crimes. At the arraignment, the Court should inquire if:

1. Arrest notifications were made?
2. Parents/legal guardians are present?
3. If no notifications were made, the Court should attempt to notify at arraignment.
4. If parents were notified but are not present, the Court should wait a reasonable period of time for parents to appear, but it should not prevent the Court from proceeding.

Temporary Orders of Protection: Bridge TOP

- Upon removal, the Youth Part Judge acting in his/her capacity as a Family Court Judge may "upon application of the presentment agency and for good cause shown," issue a Temporary Order of Protection ("Bridge TOP"). FCA § 304.2.
- NYC: The Bridge TOP will be returnable in Family Court within 7 days. The parties will be directed by the Youth Part to appear in Family Court on the designated day.
- ONYC: The Bridge TOP will expire after 60 days unless extended.

Assignment of Counsel Upon Removal: AFC

- The Youth Part Judge may assign an Attorney for the Child (AFC) in adolescent offender cases that are removed to Family Court-Probation Intake.
- However, the Attorney must be a member of the Appellate Division AFC panel or a staff attorney of an institutional provider that has contracted with OCA to provide AFC services.

Sentencing & Detention

- Adolescent Offenders are subject to the Adult sentencing scheme.
- Court must take youth's age into consideration when imposing sentence upon an Adolescent Offender. (PL § 60.10-a)
- **Adolescent Offenders are eligible for Youthful Offender (YO) treatment.** Court must make a Youthful Offender determination at sentencing, in every case where the defendant is eligible, regardless of whether defendant has asked for YO treatment or whether YO was part of the plea bargain. (See, *People v. Rudolph* 21 N.Y.2d 497 [2013]).
- CPL § 720.10(2)(c): YO is not available if the defendant's juvenile delinquency adjudication is for a "Designated Felony Act" as defined in FCA § 301.2 (8).
- An Adolescent Offender will have a criminal conviction unless afforded Youthful Offender treatment.
- **Sentence of Imprisonment for Adolescent Offender with YO Treatment (PL § 60.02):** Court must impose a sentence authorized for a Class E felony which includes the following:
 - **(1) Probation or "Split Sentence"** (Probation and Imprisonment); **(2) Conditional Discharge or Unconditional Discharge;**
 - **(3) Fine, or**
 - **(4) Imprisonment** (definite sentence up to 1 year, or an indeterminate term with a minimum = 1/3 of max. Maximum = 1 1/3 to 4 years.)
- **Youthful Offender:** Consecutive terms cannot exceed the authorized maximum term of imprisonment (4 years) for Class E Felony.
- **Pre-Trial Detention of an Adolescent Offender** will be in a facility certified by OCFS as a Specialized Secure Juvenile detention facility for older youth.
- **Sentencing:** Detention is in a facility certified by OCFS in conjunction with the State Commission of Correction as a specialized secure juvenile detention facility for older youth.
- Adolescent Offenders under the age of 21 at time of sentence, who are sentenced to a term of imprisonment in excess of one year, must be committed to the NYS Department of Corrections & Community Supervision (DOCCS).
- **Adolescent Offender Sentencing: PL § 70.20(4)**
 - (a): AO given indeterminate/determinate/definite sentence & is under 21 at sentence, shall be committed to OCFS for confinement in secure facility. However, AO given definite sentence less than a year, the Judge can order that AO serve sentence in specialized secure juvenile detention facility for older youth.
 - AO given indeterminate/determinate sentence shall be committed to DOCCS & if under 18 at sentence, AO shall be placed in Adolescent Offender facility.
 - AO 18 or older at sentence will serve sentence in facility operated by DOCCS for adults.
 - AO who serves 2 years in an Adolescent Offender facility that had time remaining on sentence must be transferred to adult facility. If however, AO is within four months of completing the sentence, they may at the discretion of DOCCS be permitted to remain in the Adolescent Offender facility.

Pre-Indictment: Removal Preliminary Hearing: Adolescent Offender CPL § 722.21(3)

Where an Adolescent Offender is charged with a felony, if the Youth Part Judge determines:

1. There is reasonable cause to believe that the defendant committed a felony—then the defendant is held for Grand Jury action.
2. There is no reasonable cause to believe the defendant committed a felony, but reasonable cause to believe the defendant committed an act of juvenile delinquency—then the case MUST be removed to Family Court pursuant to CPL § 725.
3. There is no reasonable cause to believe that any crime was committed—then the matter must be **dismissed** and bail, if any, exonerated.

Non-Violent Felonies: Presumption in Favor of Removal CPL § 722.21 & CPL § 722.23

CPL § 722.21(4): Non-violent felonies starting in the Youth Part have a **presumption of removal** to Family Court within **30 days** of arraignment.

- Prosecution has burden to move within that time frame to prevent the removal of the case for “**extraordinary circumstances.**”
- “**Extraordinary Circumstances ???**” Undefined in statute.

People’s Motion to Prevent Removal: Motion Practice CPL §722.23(1)(a)

- Motion must be in writing.
- Upon prompt notice to the defendant.
- Must contain sworn allegations of facts based upon personal knowledge.
- The District Attorney shall indicate if a hearing is being requested.
- The motion shall be noticed to be heard promptly.
- The defendant shall be given an opportunity to reply.
- Either party may request a hearing. The hearing shall be held expeditiously.

Removal of Violent Felony Offenses

Violent Felony Offenses **must** be calendared in the Youth Part within 6 days of arraignment for the purpose of reviewing the accusatory instrument. CPL § 722.23(2)

Where the prosecutor consents to removal of an Adolescent Offender case, the Youth Part **must** consider the nine factors specified in CPL § 722.22(2) and **shall** remove the case to Family Court if it determines that it would be in the interests of justice to do so. CPL § 722.20(4)

To **prevent** removal, the Prosecution must prove by a “preponderance” that:

1. Defendant caused significant physical injury to non-participant; or
 2. Defendant displayed a firearm or deadly weapon; or
 3. Defendant unlawfully engaged in specified sex offenses.
- **If none of these three factors are present**, then the People can move to prevent removal based upon extraordinary circumstances.
 - Defendant may waive review of felony complaint and the opportunity for removal. Waiver must be knowing, voluntary and in open court. CPL § 722.23(4)

People Consent: Interests of Justice and Mitigation: CPL § 722.21(5)

Where an Adolescent Offender is charged with: Murder 2nd; Rape 1st ; Criminal Sexual Act 1st; or an armed felony— the Court may only remove the matter when the:

- A) Prosecution requests,
 - B) Court finds Interests of Justice and
 - C) Court finds:
1. Mitigating circumstances bearing directly upon the manner in which the crime was committed; or
 2. Relatively minor participation of the accused in the crime, although not sufficiently minimal as to constitute a defense; or
 3. Possible deficiencies in proof of the crime.

CPL § 722.22(2): Interests of Justice: Nine Factors to Consider

- Seriousness of the offense
- Extent of harm
- Evidence of guilt
- History and Character of the defendant
- Purpose and Effect of imposing a sentence
- Impact of Removal on safety and welfare of the community
- Impact of Removal on public confidence
- Where appropriate – attitude of complainant
- Other relevant factors

Court’s Determination (CPL § 722.23 and CPL § 722.21) & Removal Order (CPL Article 725)

- **Non-Violent Felonies: CPL § 722.23(1)(d) and (e):** The Court shall deny the motion unless it makes a determination that “extraordinary circumstances” exist that should prevent the transfer to Family Court.
- The Court shall make its determination in writing or on the record.
- The Court must decide the motion within **5 days** of submission by defense or conclusion of the hearing (whichever is later).
- The decision shall include findings of fact and (to the extent practicable) conclusions of law.
- **Violent Felony: CPL § 722.23(2)(c):** The Court shall order that the case proceed like a non violent felony unless it makes a determination in writing that the DA proved one or more of the following: significant physical injury, displayed firearm, or sexual conduct.
- CPL § 722.23(2)(d): When Court determines that the case should not proceed like a non-violent felony, its determination must be in writing or on the record and shall include findings of fact and (to the extent practicable) conclusions of law.
- **Removal of Violent Felony:** If DA consents, must state reason on the record. CPL § 722.21(6)(b). Additionally, the Court must state on the record the factors that the Court based its determination on, and shall give its reasons for removal in detail and not in conclusory terms. CPL § 722.21(6)(a)
- **Upon Removal:** The criminal action is terminated and sealed pursuant to CPL § 725.10(2) and CPL § 725.15.
- Pursuant to CPL § 725.05(8): All pleadings and proceedings in the action, or a certified copy of same, shall be transmitted to the Family Court, including but not limited to: minutes of any hearing inquiry or trial held in the action; minutes of any grand jury proceeding; or minutes of any plea accepted and entered.

Rockefeller Drug Law Reform Sentencing Chart⁶

Class Felony	Determinate Sentence Term	Post-Release Supervision	Probation Permitted	Alternative Definite Sentence Permitted	Y.O. Permitted	Parole Supervision Sentence	Shock Permitted ⁴	Judicially Ordered Shock	CASAT Sentence Permitted	Judicial Diversion ^{5, 8}
A-I First Offense	8 - 20	5	No	No	No	No	No	No	Yes	No
A-I Major Trafficker	15/25-Life ⁹	5 ⁹	No	No	No	No	No	No	Yes	No
A-I Prior Non-Violent	12 - 24	5	No	No	No	No	No	No	Yes	No
A-I Prior Violent	15 - 30	5	No	No	No	No	No	No	Yes	No
A-II First Offense	3 - 10	5	Yes/life ¹	No	No	No	Yes	Yes ³	Yes	No
A-II Prior Non-Violent	6 - 14	5	Yes/life ¹	No	No	No	Yes	Yes ³	Yes	No
A-II Prior Violent	8 - 17	5	No	No	No	No	Yes	Yes ³	Yes	No
B First Offense	1 - 9	1 - 2	Yes ¹⁰	Yes 1 yr. or less	Yes	Yes ²	Yes	Yes ³	Yes	Yes ⁵
B Sale Near School	2 - 9	1 - 2	Yes ¹⁰	Yes 1 yr. or less	Yes	Yes ²	Yes	Yes ³	Yes	Yes ⁵
B Sale to a Child	2 - 9	1 - 2	Yes/25 ¹	No	NA	No	Yes	Yes ³	Yes	Yes ⁵
B Prior Non-Violent	2 - 12	1 ½ - 3	Yes/life ¹	No	No	No	Yes	Yes ³	Yes ⁷	Yes ⁵
B Prior Violent	6 - 15	1 ½ - 3	No	No	No	No	Yes	Yes ³	Yes ⁷	No
C First Offense	1 - 5 ½	1 - 2	Yes ¹⁰	Yes 1 yr. or less	Yes	No	Yes	Yes ³	Yes	Yes ⁵
C Prior Non-Violent	1 ½ - 8	1 ½ - 3	Yes ¹⁰	Yes 1 yr. or less	No	Yes ²	Yes	Yes ³	Yes	Yes ⁵
C Prior Violent	3 ½ - 9	1 ½ - 3	No	No	No	No	Yes	Yes ³	Yes	No
D First Offense	1 - 2 ½	1	Yes ¹⁰	Yes 1 yr. or less	Yes	No	Yes	Yes ³	Yes	Yes ⁵
D Prior Non-Violent	1 ½ - 4	1 - 2	Yes ¹⁰	Yes 1 yr. or less	No	Yes ²	Yes	Yes ³	Yes	Yes ⁵
D Prior Violent	2 ½ - 4 ½	1 - 2	No	No	No	No	Yes	Yes ³	Yes	No
E First Offense	1 - 1 ½	1	Yes ¹⁰	Yes 1 yr. or less	Yes	No	Yes	Yes ³	Yes	Yes ⁵
E Prior Non-Violent	1 ½ - 2	1 - 2	Yes ¹⁰	Yes 1 yr. or less	No	Yes ²	Yes	Yes ³	Yes	Yes ⁵
E Prior Violent	2 - 2 ½	1 - 2	No	No	No	No	Yes	Yes ³	Yes	No

¹ Requires recommendation of DA, material assistance in prosecution of drug offense, and court approval. (Penal Law §65.00(1)(b)).

² Excluded if convicted of another felony offense, prior violent felony, a class A or B non-drug or subject to an undischarged term. CPL §410.91 (2).

³ Eligible if served no state prison time on prior violent felony. Less than 50 yrs old. Excludes crimes listed in (Corr.L. §865(1)). For terms of more than 3 years must wait for rolling admissions, but order is issued at sentencing.

⁴ Same as ft. note 3. For terms of more than 3 years must wait for rolling admission. (Corr.L. §865(2)).

⁵ See CPL §216.00(1)(a) for exclusions, but D.A. may consent to include exclusions.

⁶ Effective 1/10/14

⁷ Must serve 9 months jail or prison time to be eligible.

⁸ Judicial Diversion effective 10/7/09.

⁹ Alternative determinate sentence possible (8-20).

¹⁰ Effective 1/10/14 probation may be 3, 4 or 5 years. [PL§65.00(3)].

(Updated 11/18/16)

Center for Community Alternatives

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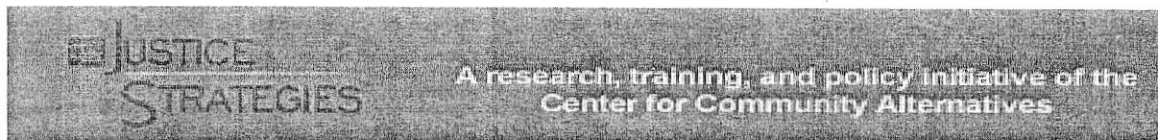
Type of Current Conviction	Violent Offender <i>First time Non-violent Offender</i>		Violent Offender*	Offender Non-violent <i>7</i>		Felony Offender Violent Felony	Second Violent Felony Offender	Persistent Felony Offender		Persistent Violent Felony Offender	
	Min.	Max.	Determinate	Min.	Max.	Determinate	Determinate	Min.	Max.	Min.	Max.
Class A1	15 - 25	Life									
Class AII	3 - 8½	Life		6 - 12½	Life			15-25	Life		
Class B	⅓ max.	3 - 25	5 - 25 years	½ max.	9- 25	8 - 25 years	10 - 25 years	15-25	Life	20-25	Life
Class C	⅓ max.	3 - 15	3½ - 15 years	½ max.	6 - 15	5 - 15 years	7 - 15 years	15-25	Life	16 - 25	Life
Class D	⅓ max.	3 - 7	2 - 7 years	½ max.	4 - 7	3 - 7 years	5 - 7 years	15-25	Life	12 - 25	Life
Class E	⅓ max.	3 - 4	1½ - 4 years	½ max.	3 - 4	2 - 4 years	3 - 4 years	15-25	Life	No min.	Life

*For first time violent felony offenders, other than those convicted of an Article 130 offense, an indeterminate sentence can be imposed if after a hearing the court determines A) the defendant was the victim of physical, sexual or psychological abuse by the victim or intended victim of the instant offense B) such abuse was a factor in causing the defendant to commit the instant offense and C) the victim or intended victim was a member of the same family or household (as that term is defined in CPL 530.11) as the defendant. In which case the following chart is applied.

Class and Type of Current Conviction	Min.	Max.
Class B	½ max.	6 - 25
Class C	½ max.	4½ - 15
Class D	½ max.	3 - 7
Class E	½ max.	3 - 4

Effective September 1, 1998

**EARLY RELEASE CHECKLIST:
DETERMINE SENTENCES**



Program	Eligibility	Exclusions	Impact	Impact on Client
Willard	CPL § 410.91; specified 2d D & E property offenses; 2d C, D, & E drug offenses; 1st B drug offense (except CSCS to a Child)	No current conviction non-specified offense; no prior VFO, class A or B non-drug felony conviction; not subject to undischarged term of prison	Sentenced to parole supervision, with first 90 days spent at Willard	
Shock	Correction Law §§ 865-867; b/w 16 and 50 years old; within 3 years conditional release	Not convicted A-I, VFO, sex, homicide, escape or absconding, or second B drug felony w/ prior violent; cannot have previously done state bid. Must be screened by Shock screening committee (indications of violence, predatory behavior, or crimes of sophistication; medical or mental health problems)	Graduates of 6 month program earn EEC ¹ and are immediately conditional release eligible	
Judicial Shock	PL § 60.04(7); same as above, but must also be convicted drug offense	Same as above, but screened only for medical/mental health problems; if exist, alternative-to-Shock program must be made available.	same as above	
Temporary Release (includes CASAT)	Correction Law §§ 851-861; within 24 months of earliest release (30 months for drug offenses) and requisite time in (generally 6 months; 9 months for second B felony drug offense)	Not convicted VFO, sex offense, homicide, escape, absconding, or aggravated harassment of DOCS employee; violent felony override avail where no use or possession of deadly weapon/dangerous or no serious injury.	Release to community for extended periods of time for work, education, etc.	
Judicial CASAT	PL § 60.04(6); conviction for drug offense	For CASAT annex and work release, must not have any of above exclusions. If above exclusions apply, will only get CASAT annex and only when 6-9 months from earliest release.	If TR eligible, will enter CASAT annex for 6 months and then work release.	
Presumptive Release	Correction Law § 806; have achieved an EEC (§ 805)	Not convicted A-I, VFO, specified homicide, sex offense, sex performance of child, hate crime, terrorism, or aggravated harassment of employee; no serious disciplinary infraction or frivolous lawsuit.	Released at earliest release opportunity	
Merit Release	Correction Law § 803; achieve EEC one of 4 program objectives.	Not convicted VFO, A-I non-drug felony, sex or incest offense, or aggravated harassment DOCS employee	1/7 off minimum <i>in addition to</i> the 1/7 off for conditional release.	
Conditional Release	all determinate sentences	poor institutional record	1/7 off determinate sentence	

Post Release Supervision: 1-5 for non sex felonies (PL § 70.45(2)); 3 to 25 years for felony sex offenses (PL § 70.80).

¹ Earned Eligibility Certificate. See Correction Law § 805; issued if individual achieves DOCS programming objectives.

Sentences for Felony Sex Offenses (70.80PL)

<i>Level of Offense</i>	<i>First Felony</i>	<i>Prior Non-Violent Felony</i>	<i>Prior Violent Felony</i>
A-II	Min 10-life Max 25-life	Min 10-life Max 25-life	Min 10-life Max 25-life
B	5-25 Det. 5-20 PRS	8-25 Det. 10-25 PRS	9-25 Det. 10-25 PRS
C	3.5-15 Det. 5-15 PRS	5-15 Det. 7-20 PRS	6-15 Det. 7-20 PRS
D	2-7 Det.* 3-10 PRS	3-7 Det. 5-15 PRS	5-7 Det. 5-15 PRS
E	1.5-4 Det.* 3-10 PRS	2-4 Det. 5-15 PRS	2.5-4 Det. 5-15 PRS

* Alternative Sentence of probation or local time is permissible

BASIC SENTENCING GUIDELINES FOR NON-DRUG, NON-J.O., NON-SEX FELONIES

(Discretionary Persistent Felony Offender Sentencing: All Levels of Felony Crime, From "E" to "B," Have the Same Range Applicable: Minimum Sentence is '15 to Life' up to Maximum of '25 to Life') R.D. 10/14/1

<u>LEVEL OF CRIME</u> V V	<u>NON-VFO's</u>	<u>VFO's</u>	<u>PREDICATE FELON #1:</u> New Felony Is A <u>Non-VFO</u>	<u>PREDICATE FEL. #2:</u> New Felony is VFO, Prior Non-VFO	<u>VFO PREDICATE FELON #3</u> <u>Both Are VFO's</u>	<u>PERSISTENT VIOLENT FELONY OFFENDER</u>
<u>"B"</u> <u>FELONIES</u>	<u>Indeterm. Sent.</u> From Min: '1 to 3' To Max: '8 1/3 to 25' <u>Parole Time Included</u>	<u>Determinate Sentences</u> From Min.: 5 To Max: 25 <u>Post Release Supervision</u> From: 2 1/2 To: 5 Years	<u>Indeterminate Sentences</u> From Min.: '4 1/2 to 9' To Max: '12 1/2 to 25' <u>Parole Time Included</u>	<u>Determinate Sentences</u> From Min.: 8 To Max: 25 <u>Post Release Supervision</u> 5 Years Only	<u>Determinate Sentences</u> From Min.: 10 To Max: 25 <u>Post Release Supervision</u> 5 Years Only	<u>Indeterm. Sent.</u> From Min.: '20 to Life' To Max: '25 to Life' <u>Parole Time Included</u>
<u>"C"</u> <u>FELONIES</u>	Crimes Found in PL 60.05(4) Require Min. '1 to 3' All others: <u>Any Sentence.</u> Max: '7 1/2 to 15'	<u>Determinate Sentences</u> From Min.: 3 1/2 To Max.: 15 <u>P.R.S.</u> From: 2 1/2 To 5 years	<u>Indeterm. Sent.</u> From Min.: '3 to 6' To Max: '7 1/2 to 15' <u>Parole Time Included</u>	<u>Determinate Sentences</u> From Min.: 5 To Max.: 15 <u>P.R.S.</u> From: 2 1/2 To 5 years	<u>Determinate Sentences</u> From Min.: 7 To Max.: 15 <u>P.R.S.</u> From: 2 1/2 To 5 years	<u>Indeterm. Sent.</u> From Min.: '16 to Life' To Max: '25 to Life' <u>Parole Time Included</u>
<u>"D"</u> <u>FELONIES</u>	<u>Any Type Of Sentence Except Determinate</u> To Max.: '2 1/3 to 7' <u>Parole Incl.</u>	<u>Any Type Of Sentence Except Indeterminate</u> To Max.: 7 <u>P.R.S.</u> From 1 1/2 to 3	<u>Indeterminate Sentences</u> From Min.: '2 to 4' To Max: '3 1/2 to 7' <u>Parole Included</u>	<u>Determinate Sentences</u> From Min.: 3 To Max.: 7 <u>Post Release Supervision</u> 5 Years Only	<u>Determinate Sentences</u> From Min.: 5 To Max.: 7 <u>Post Release Supervision</u> 5 Years Only	<u>Indeterm. Sent.</u> From Min.: '12 to Life' To Max: '25 to Life' <u>Parole Time Included</u>
<u>"E"</u> <u>FELONIES</u>	<u>Any Type Of Sentence Except Determinate</u> To Max.: '1 1/3 to 4' <u>Parole Incl.</u>	<u>Any Type Of Sentence Except Indeter.</u> To Max.: 4 <u>P.R.S.</u> From 1 1/2 to 3	<u>Indeterminate Sentences</u> From Min.: '1 1/2 to 3' To Max: '2 to 4' <u>Parole Incl.</u>	<u>Determinate Sentences</u> From Min.: 2 To Max.: 4 <u>P.R.S.</u> 5 Years Only	<u>Determinate Sentences</u> From Min.: 3 To Max.: 4 <u>P.R.S.</u> 5 Years Only	<u>Indeterm. Sent.</u> From Min.: '3 to Life' To Max: '4 to Life' <u>Parole Included</u>
	<u>NON-VFO's</u>	<u>VFO's</u>	<u>PREDICATE FELON #1</u>	<u>PREDICATE FELON #2</u>	<u>PREDICATE FELON #3</u>	<u>VFO PERSISTENT</u>

