60TH ANNIVERSARY

of

NEW YORK'S FAMILY COURT

PROGRAM MATERIALS

NOVEMBER 1, 2022

11 A.M.

COURT OF APPEALS HALL

CONTENTS

Rules of the Chief Judge

§7.2 Function of the attorney for the child.

(a) As used in this part, "attorney for the child" means a law guardian appointed by the family court pursuant to section 249 of the Family Court Act, or by the supreme court or a surrogate's court in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto.

(b) The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation.

(c) In juvenile delinquency and person in need of supervision proceedings, where the child is the respondent, the attorney for the child must zealously defend the child.

(d) In other types of proceedings, where the child is the subject, the attorney for the child must zealously advocate the child's position.

(1) In ascertaining the child's position, the attorney for the child must consult with and advise the child to the extent of and in a manner consistent with the child's capacities, and have a thorough knowledge of the child's circumstances.

(2) If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests. The attorney should explain fully the options available to the child, and may recommend to the child a course of action that in the attorney's view would best promote the child's interests.

(3) When the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child's wishes. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position.

Historical Note:
Added section 7.2 Oct. 17, 2007

McKinney's Consolidated Laws of New York Annotated
Family Court Act (Refs & Annos)
Article 10-a. Permanency Hearings for Children Placed Out of Their Homes

McKinney's **Family Court Act** § **1090-a**

§ **1090-a**. Participation of children in their permanency hearings

Effective: March 21, 2016
Currentness

(a)(1) As provided for in subdivision (d) of section one thousand eighty-nine of this article, the permanency hearing shall include an age appropriate consultation with the child.

(2) Except as otherwise provided for in this section, children age ten and over have the right to participate in their permanency hearings and a child may only waive such right following consultation with his or her attorney.

(3) Nothing in this section shall be deemed to limit the ability of a child under the age of ten years old from participating in his or her permanency hearing. Additionally, nothing herein shall be deemed to require an attorney for the child to make a motion to allow for such participation. The court shall have the discretion to determine the manner and extent to which any particular child under the age of ten may participate in his or her permanency hearing based on the best interests of the child.

(b)(1) A child age fourteen and older shall be permitted to participate in person in all or any portion of his or her permanency hearing in which he or she chooses to participate.

(2) For children who are at least ten years of age and less than fourteen years of age, the court may, on its own motion or upon the motion of the local social services district, limit the child's participation in any portion of a permanency hearing or limit the child's in person participation in any portion of a permanency hearing upon a finding that doing so would be in the best interests of the child. In making a determination pursuant to this paragraph the court shall consider the child's assertion of his or her right to participate and may also consider factors including, but not limited to, the impact that contact with other persons who may attend the permanency hearing would have on the child, the nature of the content anticipated to be discussed at the permanency hearing, whether attending the hearing would cause emotional detriment to the child, and the child's age and maturity level. If the court determines that limiting a child's in person participation is in his or her best interests, the court shall make alternative methods of participation available, which may include bifurcating the permanency hearing, participation by telephone or other available electronic means, or the issuance of a written statement to the court.

(c) Except as otherwise provided for in this section, a child who has chosen to participate in his or her permanency hearing shall choose the manner in which he or she shall participate, which may include participation in person, by telephone or available electronic means, or the issuance of a written statement to the court.

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(d)(1) For children who are age ten and over, the attorney for the child shall consult with the child regarding whether the child would like to assert his or her right to participate in the permanency hearing and if so, the extent and manner in which he or she would like to participate.

(2) The attorney for the child shall notify the attorneys for all parties and the court at least ten days in advance of the scheduled hearing whether or not the child is asserting his or her right to participate, and if so, the manner in which the child has chosen to participate.

(3)(i) The court shall grant an adjournment whenever necessary to accommodate the right of a child to participate in his or her permanency hearing in accordance with the provisions of this section.

(ii) Notwithstanding paragraph two of this subdivision, the failure of an attorney for the child to notify the court of the request of a child age ten or older to participate in his or her permanency hearing shall not be grounds to prevent such child from participating in his or her permanency hearing unless a finding to limit the child's participation is made in accordance with paragraph two of subdivision (b) of this section.

(4) Notwithstanding any other provision of law to the contrary, upon the consent of the attorney for the child, the court may proceed to conduct a permanency hearing if the attorney for the child has not conducted a meaningful consultation with the child regarding his or her participation in the permanency hearing if the court finds that:

(i) The child lacks the mental capacity to consult meaningfully with his or her attorney and cannot understand the nature and consequences of the permanency hearing as a result of a significant cognitive limitation as determined by a health or mental health professional or educational professional as part of a committee on special education and such limitation is documented in the court record or the permanency hearing report;

(ii) The attorney for the child has made diligent and repeated efforts to consult with the child and the child was either unresponsive, unreachable, or declined to consult with his or her attorney; provided, however that the failure of a foster parent or agency to cooperate in making the child reachable or available shall not be grounds to proceed without consulting with the child;

(iii) At the time consultation was attempted, the child was absent without leave from foster care; or

(iv) Demonstrative evidence that other good cause exists and cannot be alleviated in a timely manner.

(e) If an adjournment is granted pursuant to paragraph three of subdivision (d) of this section, the court may, upon its own motion or upon the motion of any party or the attorney for the child, make a finding that reasonable efforts have been made to effectuate the child's approved permanency plan as set forth in subparagraph (iii) of paragraph two of subdivision (d) of section one thousand eighty-nine of this article; such finding shall be made in a written order.

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(f) Nothing in this section shall contravene the requirements contained in subparagraph (ii) of paragraph one of subdivision (a) of section one thousand eighty-nine of this article that the permanency hearing be completed within thirty days of the scheduled date certain.

(g) Nothing in this section shall be construed to compel a child who does not wish to participate in his or her permanency hearing to do so.

Credits
(Added L.2016, c. 14, § 2, eff. March 21, 2016.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Prof. Merril Sobie

2019

A Section **1090**-**a** violation by the **Family Court** may not necessarily be appealable. In *Denise V.E.J. v. Westchester County Department of Social Services,* 163 A.D.3d 667, 82 N.Y.S.3d 140 (2d Dept. 2018), the child moved to participate in person at her permanency hearing. The court denied the motion and, instead, the child attended the hearing via video conferencing. At the hearing's conclusion, the court issued an order which was consistent with the child's position, as she articulated during the video conference. Holding that "... the child was not aggrieved by the dispositional order since she received the dispositional outcome that she was seeking at the permanency hearing ...", the Second Department dismissed the appeal.

2018

The older child has an absolute right to be present and participate at a permanency hearing (see the 2016 Practice Commentary to Section **1090**-**a**); hence the court cannot exclude the youngster, regardless of the circumstances. See, for example, *Matter of Denise V.E.J. (Latonia J.),* 163 A.D.3d 667, 82 N.Y.S.3d 140 (3d Dept. 2018), where the appellate court concluded that:

Where a dispositional order has been issued after a permanency hearing and a child was erroneously deprived of his or her statutory right to participate in person at that hearing, the remedy for such error would be to vacate the dispositional order, grant the motion to participate in person at the hearing, and remit the matter for a new permanency hearing at which the child must be permitted to participate in person (see generally **Family Court Act** § **1090**-**a**) [163 A.D.3d at 669]

Under Section **1090**-**a** the child may also waive her right to participate. When waived, may the court nevertheless order the child to be present? No, in accord with a Fourth Department decision; *Matter of Shawn S.,* 163 A.D.3d 31, 77 N.Y.S.3d 824 (4th Dept. 2018). The court cannot compel presence or, conversely, exclude

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presence. The decision is made solely by the older child. In *Shawn S.* the **Family Court** reviewed the circumstances and concluded that the child's interests would be best served by non-presence; See *Matter of Shawn S.*, 59 Misc.3d 277, 67 N.Y.S.3d 389 (Fam. Ct. Oswego Co. 2017). The decision was nevertheless reversed by the Fourth Department: "We therefore conclude that the court erred in ordering the subject child to be present at the permanency hearing." [163 A.D.3d at 32]

PRACTICE COMMENTARIES

by Prof. Merril Sobie

2016

Section 1089, in accordance with federal law, requires "age appropriate consultation with the child" in permanency hearings. The prescription, repeated at the outset of newly enacted Section **1090-a**, applies across-the-board to all permanency hearings and to all children, regardless of age. Section **1090-a**, informally known as the "kids-in-court" statute, details the circumstances and extent of the "age appropriate consultation" provision. The section outlines a three tiered approach geared to the age of the child as of the date of the hearing.

The first tier applies to children who are fourteen years of age or older. "A child age fourteen and older shall be permitted to participate in person at all or any portion of his or her permanency hearing in which he or she chooses to participate." [§ **1090-a**(b)(1)]. The right to participate is hence unequivocal. Waiver by the youngster is possible, but only following consultation with counsel [see subdivision (a)(1)(2)]. The manner of participation is likewise the child's decision, upon consultation with counsel [subdivision (d)(1)]. Ergo, the child may attend in person and participate in the courtroom, elect to participate by telephone or other electronic means, or request an out-of-court conference.

The next tier, in descending chronological age order, applies when the child is ten years or older, but less than 14. For those children, the provisions are more complex. Youths who are age 10 through 13 have an absolute right to participate. However, "... the court may, on its own motion or upon the motion of the local social services district, limit the child's in person participation in any portion of a permanency hearing upon a finding that doing so would be in the best interests of the child ..." [subdivision (b)(2)]. The criteria to determine the generalized "best interests" standard are spelled out in the subdivision. Upon determining that the child's in person participation should be limited, the court is obligated to make "alternative methods of participation available", such as bifurcating the hearing, telephone participation, or the child issuing a written statement to the court. The right to participate is therefore guaranteed, although the mode and extent of participation may be limited by the court. Any limitation imposed by the **Family Court** is of course subject to review by an appellate court.

For children less than ten years of age, Section **1090-a** commences with the broad statement: "Nothing in the section shall be deemed to limit the ability of a child under the age of ten years old from participating in his or her permanency hearing" (thereby implementing the federal directive, which is not age dependent) [subdivision (a)(3)]. However, the subdivision continues by stipulating that "The court shall have the discretion to determine the manner and extent to which any child under the age of ten may participate in his or her permanency hearing based on the best interests of the child". Participation at some level is hence required, but may be very limited. The mechanism

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for limiting the under ten year old's right to participate are not prescribed. However, the attorney for the child does not have to move for participation [subdivision (a)(3)]; that right is initially ensured. Presumably, it is incumbent upon the petitioning social services agency, the parents, the foster parents, or the court itself to move for a limitation.

The statute's presumption is that the AFC and the child will engage in “a meaningful consultation” as a prelude to a decision concerning participation (regardless of the child's age). Subdivision (4) lists the exceptions, which must be found by the court to justify the child's non-participation. In summary, the exceptions include situations in which the child lacks the mental capacity to consult meaningfully (presumably a lack of capacity will be documented by relevant evidence), or the child declines to consult, the child has absconded from foster care, or where “other good cause exists and cannot be alleviated in a timely manner.” Since any child above the age of ten will have received notice of the hearing pursuant to Section 1089, and the AFC will have received and may share the permanency report with the child, the materials upon which an intelligent discussion can be predicated should have been distributed at an earlier date.

One provision which may prove difficult to implement requires the AFC to notify the attorneys for all the parties and the court at least 10 days prior to the hearing as to whether the child is asserting his right to participate and, if so, the manner the child has chosen to participate [subdivision 2]. However, meaningful consultation between the attorney and the child may be impossible before the relevant permanency report is served (often less than 10 days prior to the hearing), the child has had an opportunity to receive and read the report, and a meeting with the attorney can be arranged. Given the time constraints, the requirement “... shall not be grounds to prevent such child from participating in his or her permanency hearing ...” The “saving clause” may be applied in more cases then the largely unworkable ten day notice provision.

Adjournments may of course be needed in light of the procedures delineated in Section **1090**-**a**. They are available, but only within the confines of the requirement that the hearing be completed within 30 days of the originally scheduled date. Neither the court nor the parties have much “wiggle room” in conducting permanency hearings.

The first reported Section **1090**-**a** case is *Matter of Denise J. (Latonia J.),* 52 Misc.3d 799, 32 N.Y.S.3d 876 (Fam. Court West. Co. 2016). Denise was 16 years old at the time of the hearing, and accordingly had an absolute right to attend in person. However, she had complex significant cognitive and behavioral problems. Further, she resided at a residential center in New Hampshire. In light of Section **1090**-**a**'s strict provision concerning children above the age of 14, the court denied an application to limit her participation and ordered that she be transported to New York for participation at the hearing. The court analogized the situation to a youth involved in a juvenile delinquency proceeding where presence is required regardless of the respondent's serious or even violent behavioral and mental issues. (Equally analogous may be cases involving the adult disturbed criminal defendant and civil commitment and guardianship proceedings.)

As the *Denise J.* decision notes, the right of a child to participate in a permanency hearing, in accord with the “age appropriate consultation” provision of Section 1089, pre-dates Section **1090**-**a**. The new section essentially clarifies the earlier provision and establishes procedures for its implementation. Thus the body of existing Section 1089 caselaw should be helpful to counsel and the court when applying Section **1090**-**a**. See the original Commentary at pages 216-217 and the supplementary section 1089 commentaries.

Last, permanency hearings constitute but one integral part of the array of child protective proceedings. The principle that children have the right to meaningful participation, including in-court presence, in proceedings which

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fundamentally affect their lives, is equally applicable across the board, from Article 10 preliminary hearings, through disposition, permanency hearings, and until the achievement of permanency. Several states permit the older child to be present at all phases of the child protective process, unless excluded for valid reason; see, e.g. Cal. Welf. & Inst. Code Section 349. Section **1090-a** may represent the initial initiative in accommodating New York's children's need to participate throughout the frequently elongated child protective judicial spectrum.

Relevant Additional Resources

Additional Resources listed below contain your search terms.

RESEARCH REFERENCES

Encyclopedias

29 N.Y. Jur. 2d Courts and Judges § 884, Concurrent Jurisdiction of Supreme Court With **Family Court** as Concerning Custody and Visitation of Minors.

Forms

10A Carmody-Wait 2d New York Practice with Forms § 70:345, Particular Cases Not Considered Moot--**Family Court** Cases.
18 Carmody-Wait 2d New York Practice with Forms § 111:62, Execution and Acknowledgment of Surrender Instrument Before **Family Court** Judge or Surrogate for Adoption of Child in Foster Care.
19D Carmody-Wait 2d New York Practice with Forms § 119A:684, Parental Rights Termination Proceedings that Must be Originated in **Family Court**.
27 Carmody-Wait 2d New York Practice with Forms § 155:9, Jurisdiction of Supreme Court and **Family Court**.

Treatises and Practice Aids

10 New York Practice, New York **Family Court** Practice § 2:69 (2d ed.), Presence of Child.
10 New York Practice, New York **Family Court** Practice § 2:108.50 (2d ed.), Permanency Hearings--Child's Right to Notice of Hearing and to Participate at Hearing.

Relevant Notes of Decisions (3)

View all 6

Notes of Decisions listed below contain your search terms.

Child's right to attend hearing

Although 16-year-old foster child with multiple complex needs had previously engaged in aggressive and dangerous behavior, she had right to participate in person at her permanency hearing pursuant to her request, under **Family Court Act** (FCA), despite objection by county department of social services that child could not be safely transported to hearing and would be unable to have meaningful consultation with her attorney or understand hearing, and guardian ad litem's objection that participation in hearing would not be in child's best interests, since attorney for child determined that child was capable of knowing, voluntary, and considered judgment, and that child's decision to participate in person was not likely to result in substantial risk of imminent serious harm to herself. In re Denise J., 2016, 52 Misc.3d 799, 32 N.Y.S.3d 876. Infants 2076

Requiring child to attend

Family court lacked the authority to compel child to be present at the permanency hearing following 14 year old child's waiver of right to participate; although under statute court could limit the participation of a child under the age of 14 based on the best interests of the child, court lacked authority to compel the participation of a child who waived his right to participate in a permanency hearing after consultation with his attorney. Matter of Shawn S. (4 Dept. 2018) 163 A.D.3d 31, 77 N.Y.S.3d 824. Infants 2076

Family Court could require 14-year-old foster child, who had several mental health concerns, to make personal appearance at his permanency planning hearings, despite child's objections to appearing, since foster child did not have absolute right under statute governing participation of children in their permanency hearings to waive his participation, and if **Family Court** was prevented from speaking with child, it would become impossible for it to measure his level of satisfaction or recognize undisclosed problems. Matter of Shawn S., 2017, 59 Misc.3d 277, 67 N.Y.S.3d 389, reversed 163 A.D.3d 31, 77 N.Y.S.3d 824. Infants 2294

McKinney's **Family Court Act** § **1090-a**, NY FAM CT § **1090-a**
Current through L.2022, chapters 1 to 579. Some statute sections may be more current, see credits for details.

End of Document

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ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby promulgate a new section 205.18 of the *Uniform Rules for the Family Court*, effective September 29, 2021, to read as follows:

Uniform Rules of the Family Court

Section 205.18. Hearings and Submission of Reports and Assessments on the Placement of a Child in a Qualified Residential Treatment Program

(1) The Commissioner of the local social services district or other agency requesting placement (hereafter "Commissioner") shall file a petition or a motion requesting a court hearing on the placement of a child in a "qualified residential treatment program" prior to or no later than five days after entry of the child into the placement. The Commissioner shall serve, send or securely transmit notice to all counsel, the parties, the attorney for the child and, if the child is ten years of age or older, the child, of the date, time and court part in which the case will be heard. At that appearance, the court shall either make a determination as to the appropriateness of and need for the placement or schedule a hearing for such determination. The determination shall be made no later than 60 days of the placement of the child in the "qualified residential treatment program."

(2) The Commissioner shall arrange for the completion of an assessment and report by a "qualified individual" no later than 30 days after the date of the child's placement in the "qualified residential treatment program" and shall submit it to the court and serve. send or securely transmit it to counsel, the parties and the attorney no later than five days after completion of the report by the "qualified individual" but in no event

less than ten days prior to the first scheduled hearing at which a determination will be made.

(3) The report and assessment shall include:

(a) The qualifications and training of the "qualified individual" preparing the report and assessment, including information as to affiliations, if any, with any state, local or authorized agency in the State of New York that provides placement services for children;

(b) The names of all caseworkers, mental health professionals and family members who contributed to the report and assessment as members of the team;, including any members suggested by the child if the child is fourteen years of age or older;

(c) An evaluation of the strengths and needs of the child and the need for the child's placement in the designated qualified residential treatment facility (hereinafter "facility");

(d) The reasons why the needs of the child cannot be appropriately and effectively met in a kinship or non-kinship foster home placement;

(e) The specific facility and the level of care in which the child is or will be placed;

(f) A description of the designated facility and the specific treatment services offered to the child at that facility;

(g) The short term and long-term goals of the child's placement and how the placement at the designated facility meets those goals;

h) How the placement in the specific facility and level of care is the most effective and appropriate placement in the least restrictive environment for the child;

(i) Documentation of the time frame and plan for the child's discharge from the qualified residential treatment facility; and

(j) Any mental health diagnosis and the basis for that diagnosis, as well as a summary of any diagnostic and treatment records, regarding the child within the past three years; provided that the diagnosis and treatment records shall be provided upon the request of counsel for a party, the attorney for the child or the court.

(4) If the court denies the Commissioner's application for the child to be placed in the specific "qualified residential treatment program" and/or level of care recommended by the Commissioner, the Commissioner shall submit a new report and assessment within ten days of the court's denial. The new report and assessment shall include a short term and long-term plan for the child including an alternative placement and/or return to parent/guardian. If the alternative placement is a qualified residential treatment program, a new assessment by a "qualified individual" must contain the information required by subdivision three of this section and must be provided to the court and all parties , including the attorney for the child, no later than five days after completion of the report by the "qualified individual" but in no event less than ten days prior to the adjourned date. In such a case, the court shall make a determination of approval or disapproval of the placement in the "qualified residential treatment program." not later than 60 days after the placement of the child in such program.

(5) A court review as to whether the child's placement in the "qualified residential treatment program" remains necessary shall be scheduled by the court no later than the next permanency or extension of placement hearing. The Commissioner shall serve, send or securely transmit notice to the parties, counsel and attorney for the child and shall submit a new report and assessment within five days of its completion but not less than ten days prior to the scheduled hearing. At each permanency or extension of placement hearing following the approval of the placement in the "qualified residential treatment program," the commissioner of the local social services district shall provide a new report and assessment including the information required by subdivision three of this section. The new report and assessment submitted for each such hearing shall include the information required by subdivision three of this section.

Chief Administrative Judge of the Courts

Dated: August 19, 2021

AO/ 251/2021

Child Welfare Placement Data: NYS Office of Children and Family Services

1. The statewide numbers of children in foster care for each year 2011 through 2021

Children in 24-Hour Foster Care on 12/31 by District 1995-2021: NYS											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
NEW YORK STATE	21,047	20,016	18,910	18,799	17,659	16,499	16,136	15,548	15,015	14,928	14,358

Source of Data: 2021 Aggregate MAPS.
Note: counts do not include children on trial discharge or temporary absence status.

2. Subsidized Kinship guardianship

Annual Foster Care Discharges to KinGap										
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
NYS	56	257	335	341	448	481	425	545	364	738

Prepared by OCFS Bureau of Research, Evaluation and Performance Analytics.
Data Source: Trends in Relative Placements; 2017 and 2021.

3. Number of children in congregate care settings

Children in 24-hour Foster Care and placed in a Congregate Care Setting on 12/31									
	2013	2014	2015	2016	2017	2018	2019	2020	2021
NYS	3,011	2,958	2,807	2,735	2,613	2,317	2,195	1,807	1,661

Source of Data: OCFS Datawarehouse 10/13/22; counts do not include children on temporary absence status.
Data as of Date: Oct 5, 2022.

191 A.D.2d 132
Supreme Court, Appellate Division, Third Department, New York.

In the Matter of JAMIE TT,[1] Alleged to be an Abused Child.
Chemung County Department of Social Services, Appellant;
Terry "TT",[1] Respondent.

July 1, 1993.

Synopsis

County department of social services brought action to adjudicate child to be abused. The Family Court, Chemung County, Danaher, J., dismissed application. Department appealed. The Supreme Court, Appellate Division, Levine, J., held that: (1) after Family Court acknowledged inability to resolve conflict between juvenile's and adoptive father's testimony, Court was required to conclude that department failed to sustain its burden of proof, and (2) juvenile did not receive effective representation of counsel to which she was constitutionally entitled at fact-finding hearing.

Reversed and remitted.

Casey, J., filed a concurring opinion.

Procedural Posture(s): On Appeal; Motion to Dismiss.

West Headnotes (5)

[1] **Infants**Deprivation, neglect, or abuse

County department of social services bringing proceeding to adjudicate child to be abused had burden to prove allegations of sexual abuse by a preponderance of the evidence. McKinney's Family Court Act § 1046(b)(i).

5 Cases that cite this headnote

[2] **Infants**Child abuse and molestation

When family court acknowledged inability to resolve conflict between juvenile's and adoptive father's testimony, leaving court in equipoise as to which version of facts was more probably true, court was required to conclude that county department of social services failed to sustain its burden of proof in a proceeding to adjudicate juvenile to be abused. McKinney's Family Court Act § 1046(b)(i).

2 Cases that cite this headnote

[3] **Infants**Children in general
InfantsEffectiveness of Counsel

Juvenile who was alleged to be abused by adoptive father had a constitutional as well as statutory right to legal representation of her interest in the proceedings on the abuse petition and her constitutional and statutory rights to be represented by counsel were not satisfied merely by state's supplying a lawyer's physical presence in the courtroom; juvenile was entitled to adequate or effective legal assistance. McKinney's Family Court Act § 1011 et seq.; U.S.C.A. Const.Amend. 14; McKinney's Const. Art. 1, § 6.

17 Cases that cite this headnote

[4] **Child Custody**Conduct or Status of Child's Parent or Custodian

Upon dismissal of child abuse petition, adoptive father's right to custody of child was superior to that of third persons, including child's grandparents, which could only be overcome by proof of extraordinary circumstances.

[5] **Infants**Evidence; procurement, presentation, and objections

Juvenile who was subject of abuse proceeding did not receive effective representation to which she was constitutionally entitled at fact-finding hearing; law guardian called no witnesses and engaged in only most perfunctory cross-examination of adoptive stepfather who was accused of abuse, consisting of only three questions, none of which had any bearing on adoptive father's credibility, and outcome turned

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upon determination of credibility of child or adoptive father. U.S.C.A. Const.Amend. 14; McKinney's Const. Art. 1, § 6.

12 Cases that cite this headnote

Attorneys and Law Firms

***133 **892** George R. Wiltsie, Law Guardian, Elmira, for appellant.

Learned, Reilly & Learned (Thomas E. Reilly, of counsel), Elmira, for respondent.
Before WEISS, P.J., and MIKOLL, YESAWICH, LEVINE and CASEY, JJ.

Opinion

LEVINE, Justice.

***132** Appeal from an order of the Family Court of Chemung County (Danaher Jr., ****893** J.), entered May 18, 1992, which dismissed petitioner's application, in a proceeding pursuant to Family Court Act article 10, to adjudicate respondent's child to be abused.

In December 1991, a child abuse petition was filed in the Family Court by petitioner alleging that Jamie "TT", a female child then 13 years old, had been sexually molested by respondent, her adoptive father and the husband of her biological mother. Annexed to the petition was the affidavit of petitioner's investigating caseworker. The affidavit related that Jamie had first disclosed to a school social worker and her guidance counselor in early December 1991 that respondent had fondled her breasts and vagina, that his sexual advances had begun over a year earlier when respondent had asked her to show her breasts to him, and that it had become progressively more intrusive and ultimately intolerable. Both educators spoke well of Jamie as an above-average student of good character and reputation.

***134** Respondent denied the allegations of the petition and the matter proceeded to a fact-finding hearing, in which petitioner was represented by the County Attorney's office and a Law Guardian appeared on Jamie's behalf. The only witness called by petitioner was Jamie, who testified in detail concerning a history of sexual touching by respondent for more than a year, occurring most often on weekday afternoons after school during the one-hour period between respondent's return from work and the mother's return from work. Respondent testified on his own behalf, categorically denying engaging in any sexual abuse of Jamie. At the conclusion of the testimony, Family Court rendered a bench decision stating that it was unable, subjectively, to resolve whether Jamie or respondent was telling the truth. The court therefore ruled that petitioner had failed in meeting the statutory burden of proving the allegations of the petition by a preponderance of the evidence, and the petition was dismissed. By consent of both parties, temporary custody of Jamie was continued with her grandparents. Petitioner and the Law Guardian appeal.[2]

[1] [2] The Law Guardian's first point on appeal appears to be that, in failing to make a credibility determination as to the truth of either Jamie's or respondent's testimony, Family Court somehow abdicated its responsibility as the trier of fact and, therefore, this court should assume that role or remit the matter for an entire redetermination. We disagree. Concededly, petitioner had the burden to prove the allegations of sexual abuse by a preponderance of the evidence (*see*, Family Ct. Act § 1046[b][i]; *see also*, *Matter of Tammie Z.*, 66 N.Y.2d 1, 494 N.Y.S.2d 686, 484 N.E.2d 1038). This placed upon petitioner the risk of nonpersuasion of the trier of fact that the allegations of the abuse petition were more probably true than untrue (*see*, *In re Winship*, 397 U.S. 358, 371–372, 90 S.Ct. 1068, 1076–1077, 25 L.Ed.2d 368 [Harlan, J., concurring]). Family Court's frank acknowledgment of an inability to resolve the conflict between Jamie's and respondent's testimony left the court in equipoise as to which version of the facts was more probably true. This being so, the court was required to conclude that petitioner had failed to sustain its burden of proof. "If the plaintiff has not succeeded in fairly and reasonably convincing the trier of facts of the truth of his cause, or where he has left the trier of facts *in such doubt as to be unable to decide the controversy*, he has not sustained his cause by a fair preponderance of the evidence" (***135** 58 NYJur2d, Evidence and Witnesses, § 967, at 720 [emphasis supplied]; *see*, *Roberge v. Bonner*, 185 N.Y. 265, 269, 77 N.E. 1023; Richardson, Evidence § 97, at 74 [Prince 10th ed]).

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[3] Alternatively, the Law Guardian urges that there should be a reversal and a remittal for a new trial because Jamie was denied the effective assistance of counsel at the fact-finding hearing. The threshold issue on this contention is whether Jamie, as the subject of the child abuse petition brought under Family Court Act article 10, had a legally cognizable right to the effective ****894** assistance of counsel throughout the proceeding. We conclude that she did. First, New York statutory law guarantees a child, allegedly abused or neglected by a parent, independent legal representation in a Family Court Act article 10 proceeding (*see*, Family Ct.Act § 249) based upon a legislative finding that "counsel [for minors in Family Court proceedings] is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition" (Family Ct.Act § 241).

[4] We are also of the view, however, that the Due Process Clauses of the Federal and State Constitutions (*see*, U.S. Const. 14th Amend.; N.Y. Const, art. 1, § 6) mandate that there be *some form* of legal representation of Jamie's interests in the proceedings on the petition. Jamie's liberty interest was clearly at stake. The effect of Family Court's exoneration of respondent was to restore to him the primary right to custody of Jamie[3]. Upon the dismissal of the child abuse petition, decisional law made respondent's right to custody of Jamie superior to third persons, including her grandparents, which could only be overcome by proof of extraordinary circumstances (*see*, *Matter of Bennett v. Jeffreys*, 40 N.Y.2d 543, 549, 387 N.Y.S.2d 821, 356 N.E.2d 277; *Matter of Sickler v. Roach*, 169 A.D.2d 874, 875, 564 N.Y.S.2d 603; *Matter of Bisignano v. Walz*, 164 A.D.2d 317, 318, 563 N.Y.S.2d 938). Thus, custody and control of Jamie by the person she claimed had sexually molested her while in his prior custody were inextricably involved in the proceedings on the abuse petition. Moreover, once custody of her was restored to respondent, he had the right to invoke State sanctions against her in a person in need of supervision proceeding (*see*, Family Ct.Act art. 7) if Jamie challenged his authority by "ungovernab[le]" behavior or running away (*see*, Besharov, Practice Commentaries, McKinney's Cons.Laws of ***136** N.Y., Book 29A, Part 1, Family Ct.Act § 712, at 21–22). We would be callously ignoring the realities of Jamie's plight during the pendency of this abuse proceeding if we failed to accord her a liberty interest in the outcome of that proceeding, entitling her to the protection of procedural due process.

Applying the three-fold analysis of *Matthews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 898, 47 L.Ed.2d 18, we have no hesitancy in concluding that the process due Jamie included effective legal representation of her interests during the child abuse proceedings against respondent. Notably, Jamie had a strong interest in obtaining State intervention to protect her from further abuse and to provide social and psychological services for the eventual rehabilitation of the family unit in an environment safe for her. Furthermore, Jamie's interest in procedural protection was heightened because of the irreconcilably conflicting positions of her and her parents in this litigation (*cf.*, *Parham v. J.R., a Minor*, 442 U.S. 584, 600–602, 99 S.Ct. 2493, 2503–2504, 61 L.Ed.2d 101). The governmental interest in this child abuse proceeding coincided with that of Jamie. As we said in *Matter of Linda C.*, 86 A.D.2d 356, 361, 451 N.Y.S.2d 268, "the interest in protecting children from the infliction of serious physical harm or sexual molestation by a parent is the apotheosis of the State's *parens patriae* role". The appearance of a lawyer to protect Jamie's interests seems clearly necessary to avoid an erroneous outcome unfavorable to Jamie in the proceeding. A fact-finding hearing under Family Court Act article 10 on a sexual abuse charge is a completely adversarial trial with few deviations from the procedures applied in civil and criminal trials. A respondent parent in such a proceeding is afforded the full right to counsel, including assignment of an attorney if indigent (*see*, Family Ct.Act § 262[a][i]). And, as previously noted, the risk of an erroneous factual determination rejecting Jamie's claim of sexual abuse would be restoration of the custodial rights of the person accused of molesting her, a result we characterized in ****895** *Matter of Linda C., supra*, at 360, 451 N.Y.S.2d 268, as "approach[ing] the level of absolute abhorrence" and the Court of Appeals characterized as "disastrous" (*Matter of Tammie Z.*, 66 N.Y.2d 1, 5, 494 N.Y.S.2d 686, 484 N.E.2d 1038, *supra*).

Thus, Jamie had a constitutional as well as a statutory right to legal representation of her interests in the proceedings on the abuse petition. Her constitutional and statutory rights to be represented by counsel were not satisfied merely by the State's supplying a lawyer's physical presence in the courtroom; Jamie was entitled to "adequate" or "effective"

legal assistance (*Cuyler v. Sullivan*, 446 U.S. 335, 344–345, 100 S.Ct. 1708, 1716–1717, 64 L.Ed.2d 333; *see*, ***137** *Matter of Karl W.*, 168 A.D.2d 997, 564 N.Y.S.2d 940). No less than an accused in a criminal case, Jamie was entitled to "meaningful representation" (*People v. Baldi*, 54 N.Y.2d 137, 147, 444 N.Y.S.2d 893, 429 N.E.2d 400). Effective representation for Jamie included assistance by an attorney who had taken the time to prepare presentation of the law and the facts, and employed basic advocacy skills in support of her interests in the case (*see*, *People v. Droz*, 39 N.Y.2d 457, 462, 384 N.Y.S.2d 404, 348 N.E.2d 880).

[5] Jamie did not receive the effective representation to which she was constitutionally entitled at the fact-finding hearing. In a child protective proceeding under Family Court Act article 10, such as the instant case, where the attorney for the petitioner-child protective agency (here the County Attorney) presented the evidence in support of the petition in the first instance, it was the duty of Jamie's court-appointed Law Guardian to insure that the evidence sustaining her allegations of sexual abuse by respondent was fully developed. "As the child's advocate, the law guardian's interest is to insure that, to the greatest extent possible, all relevant facts, expert opinions and records are introduced into evidence. Standards B–1 and B–2 thus encourage the law guardian to be familiar with the possible evidentiary material, and to question and cross-examine witnesses whenever necessary for a full presentation * * * " (Law Guardian Representation Standards [New York State Bar Assn., Committee on Juvenile Justice and Child Welfare, 1988], Part III Child Protective Proceedings; Part B: The Fact–Finding Hearing, Commentary at 145). Here, the presentation of the evidence by the County Attorney clearly required more than a passive role on the part of Jamie's Law Guardian. In a case in which, foreseeably, the outcome inevitably would turn upon a determination of the credibility of Jamie or of respondent, the County Attorney failed to call the numerous witnesses to her out-of-court statements to confirm her testimony (*see*, Family Ct.Act § 1046[a][vi]), expressly refused to explore the possibility of obtaining validation evidence from an expert witness, admissible to corroborate or bolster Jamie's testimony (*see*, *Matter of Nicole V.*, 71 N.Y.2d 112, 121, 524 N.Y.S.2d 19, 518 N.E.2d 914), and declined to conduct any cross-examination whatsoever of respondent. The Law Guardian did nothing to make up for these lapses in presentation of the evidence in support of Jamie's allegations. The Law Guardian called no witnesses and engaged in only the most perfunctory cross-examination of respondent, consisting of only three questions, none of which had any bearing on respondent's credibility.

The deficiencies noted cannot be explained as merely losing ***138** trial tactics. No conceivable forensic stratagem could justify the absence of preparation and advocacy skills shown here which in a criminal case would clearly have required reversal (*see*, *People v. Daley*, 172 A.D.2d 619, 620–621, 568 N.Y.S.2d 157; *People v. Echavarria*, 167 A.D.2d 138, 139–141, 561 N.Y.S.2d 226; *People v. Morales*, 118 A.D.2d 814, 815, 500 N.Y.S.2d 170; *People v. Worthy*, 112 A.D.2d 454, 455–456, 492 N.Y.S.2d 423). The Law Guardian's failure to take an active role in the proceedings is alone sufficient to require reversal (*see*, *Matter of Elizabeth R.*, 155 A.D.2d 666, 668, 548 N.Y.S.2d 55).

Consequently, the order dismissing the petition should be reversed and the matter remitted to Family Court for further proceedings, including a new fact-finding hearing.

****896 *140** ORDERED that the order is reversed, on the law and the facts, without costs, and matter remitted to the Family Court of Chemung County for further proceedings not inconsistent with this court's decision.

WEISS, P.J., and MIKOLL and YESAWICH, JJ., concur.

CASEY, Justice (concurring).

I agree with the majority that Family Court's order must be reversed and the matter remitted for a new hearing, but there is no need to reach the "effective assistance of counsel" issue.[4] Family Court purportedly based its dismissal of the petition after the fact-finding hearing upon the conclusion that petitioner had not sustained the burden of proof imposed by Family Court Act § 1046(b), but it is clear from its decision that Family Court failed to weigh the evidence presented at the hearing and did not engage in fact finding. A proper basis for dismissal of the petition is therefore absent.

It is undisputed that the child's testimony, if credited, established all the necessary elements to meet the definition

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of an abused child (*see*, Family Ct.Act § 1012[e]). Petitioner, therefore, met the initial burden of going forward with evidence sufficient to establish a prima facie case of abuse and the burden of going forward with proof then shifted to respondent (*see, Matter of Shawniece E.*, 110 A.D.2d 900, 488 N.Y.S.2d 733), who met that burden by testifying that the incidents testified to by the child did not occur. In these circumstances, with petitioner having submitted evidence which, if credited, would have ***139** sustained a finding of sexual abuse, Family Court was required to weigh the evidence to determine whether the proof preponderated in petitioner's favor (*see, Matter of Miranda UU.*, 168 A.D.2d 704, 705, 563 N.Y.S.2d 564), and "[t]here being no physical evidence of abuse, this case turns almost completely on questions of credibility, wherein Family Court's superior vantage point by virtue of being able to hear and observe the witnesses requires great deference by an appellate court" (*Matter of Swift v. Swift*, 162 A.D.2d 784, 785, 557 N.Y.S.2d 695).

In the case at bar, Family Court neither weighed the evidence nor resolved the questions of credibility created by the conflicting testimony. Instead, the court concluded:

> I find nothing corollary to the child's testimony that would indicate that she is either telling the truth or telling a lie or has some misconceptions or misinterpretation of the events about which she testified. I have her testimony that they occurred, the father's testimony that they did not occur, and that is all I have. And on the basis of that I find that the petitioner has not sustained the petition.

To the extent that Family Court required corroboration of the 14–year–old child's sworn testimony in the form of something "corollary", it clearly erred, for no such corroboration is required (*see*, Family Ct.Act § 1046; *cf.*, *Matter of Fawn S.*, 123 A.D.2d 871, 507 N.Y.S.2d 651). Family Court also erred in premising its conclusion on the theory that sworn testimony of incidents of abuse is insufficient to sustain the petition when the respondent testifies that the abuse did not occur. As previously explained, the conflicting testimony created questions of credibility which Family Court was required to decide (*see*, *Matter of Carine T.*, 183 A.D.2d 902, 585 N.Y.S.2d 54). The child's testimony, if credited, was sufficient to establish the abuse alleged in the petition and, therefore, Family Court could ****897** not dismiss the petition unless it weighed the evidence and decided not to credit the child's testimony. Family Court, however, declared itself unable to decide who was telling the truth and solely on that basis dismissed the petition. Regardless of how difficult the credibility issue was to resolve, it was Family Court's obligation to do so as the trier of fact. In refusing to resolve the credibility issue presented by the conflicting testimony, Family Court failed to engage in the requisite fact finding and was therefore without power to dismiss the petition (*see*, *Matter of Rhonda T.*, 99 A.D.2d 758, 471 N.Y.S.2d 676; *Matter of Charmine W.*, 61 A.D.2d 769, 402 N.Y.S.2d 19).

Instead of remitting the matter to Family Court for the purpose of resolving the credibility issue on the basis of the existing record, it is my view that a new hearing should be held. Approximately one year has elapsed since the original hearing was conducted, and Family Court's superior vantage point by virtue of being able to hear and observe the witnesses has obviously dissipated as a result of this passage of time. In these circumstances, and considering the importance of the interests at stake in this proceeding, it is my view that the appropriate remedy for Family Court's failure to engage in the requisite fact finding is to remit the matter for a new hearing.

All Citations

191 A.D.2d 132, 599 N.Y.S.2d 892

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Footnotes

[1] Fictitious name.

[2] Despite filing a notice of appeal, petitioner chose not to file a brief.

[3] Throughout the proceeding, Jamie's mother supported respondent's claim of innocence of the allegations of sexual abuse and she continued to reside with him.

[4] The majority's focus on the County Attorney's conduct to determine the effective representation issue is, in my view, unwarranted. The County Attorney represents the interests of petitioner, the party authorized to commence this proceeding (*see*, Family Ct.Act § 1032). The Law Guardian represents the interests of the child who is the subject of this proceeding (*see*, Family Ct.Act § 241). Although these interests may overlap (*see*, Family Ct.Act § 1011), the duties of the County Attorney and the Law Guardian are independent and may require them to pursue divergent roles (*see*, Besharov, Practice Commentary, McKinney's Cons.Laws of N.Y., Book 29A, Part 1, Family Ct.Act § 241, at 190–194). In determining whether the child received adequate representation, therefore, the focus should be on what the Law Guardian did or did not do, not the quality of the County Attorney's conduct.

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NYS Laws of 2021, chapter 56: Excerpt: Part L

[Implementation of Federal Family First Prevention Services Act, Public Law 115-123, Title VII, Part IV, sections 50741, 50742]

PART L

Section 1. Paragraph (g) of subdivision 3 of section 358-a of the social services law, as amended by section 4 of subpart L of part XX of chapter 55 of the laws of 2020, is amended to read as follows:

(g) **(i)** In any case in which an order has been issued pursuant to this section approving a foster care placement instrument, the social services official or authorized agency charged with custody or care of the child shall report **the initial placement and** any anticipated change in placement to the court and the attorneys for the parties, including the attorney for the child, forthwith, but not later than one business day following either the decision **to make the initial placement or** to

change the placement or the actual date the **initial placement or** placement change occurred, whichever is sooner. Such notice shall indicate the date that the placement change is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the **initial placement or** placement change, the local social services district or authorized agency shall subsequently notify the court and attorneys for the parties, including the attorney for the child, of the date the placement **or placement**

change occurred; such notice shall occur no later than one business day following the placement **or placement** change.

(ii) When a child whose legal custody was transferred to the commissioner of a local social services district in accordance with this section resides in a qualified residential treatment program, as defined in section four hundred nine-h of this chapter, and where such child's initial placement or change in placement in such program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to subparagraph (i) of this paragraph and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with section three hundred ninety-three of this chapter. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the child in the qualified residential treatment program commenced.

§ 1-a. Section 371 of the social services law is amended by adding a new subdivision 22 to read as follows:

22. "Supervised setting" shall mean a residential placement in the community approved and supervised by an authorized agency or the local social services district in accordance with the regulations of the office of children and family services to provide a transitional experience for older youth in which such youth may live independently. A supervised setting includes, but is not limited to, placement in a supervised independent living program, as defined in subdivision twenty-one of this section.

§ 1-b. Paragraph (c) of subdivision 2 of section 383-a of the social services law, as added by section 5 of part M of chapter 54 of the laws of 2016, is amended to read as follows:

(c) "Child care facility" shall mean an institution, group residence, group home, agency operated boarding home, or supervised **setting, including a supervised** independent living program.

§ 2. The social services law is amended by adding a new section 393 to read as follows:

§ 393. Court review of placement in a qualified residential treatment program. 1. The provisions of this section shall apply when a child is placed on or after September twenty-ninth, two thousand twenty-one and resides in a qualified residential treatment program, as defined in section four hundred nine-h of this article, and whose care and custody were transferred to the commissioner of a local social services district in accordance with section three hundred fifty-eight-a of this chapter, or whose custody and guardianship were transferred to the commissioner of a local social services district in accordance with section three hundred eighty-three-c, or three hundred eighty-four-b of this title.

2. (a) Within sixty days of the start of a placement of a child referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(i) Consider the assessment, determination, and documentation made by the qualified individual pursuant to section four hundred nine-h of this article;

(ii) Determine whether the needs of the child can be met through placement in a foster family home and, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan; and

(iii) Approve or disapprove the placement of the child in a qualified residential treatment program. Provided that, where the qualified individual determines that the placement of the child in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of this

article, the court may only approve the placement of the child in the qualified residential treatment program if:

(A) the court finds, and states in the written order that:

(1) circumstances exist that necessitate the continued placement of the child in the qualified residential treatment program;

(2) there is not an alternative setting available that can meet the child's needs in a less restrictive environment; and

(3) that continued placement in the qualified residential treatment program is in the child's best interest; and

(B) the court's written order states the specific reasons why the court has made the findings required pursuant to clause (A) of this subparagraph.

(iv) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

(b) At the conclusion of the review, if the court disapproves placement of the child in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the child and direct the local social services district to make such other arrangements for the child's care and welfare that is in the best interest of the child and in the most effective and least restrictive setting as the facts of the case may require. If a new placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

3. The court may, on its own motion, or the motion of any of the parties or the attorney for the child, proceed with the court review required pursuant to this section on the basis of the written records received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to clause (A) of subparagraph (iii) of paragraph (a) of subdivision two of this section and provide such written order to the parties and the attorney for the child expeditiously, but no later than five days.

4. Documentation of the court's determination pursuant to this section shall be recorded in the child's case record.

5. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such child, including but

not limited to the child's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

§ 2-a. Subparagraph 1 of paragraph (g) of subdivision 6 and subdivision 10 of section 398 of the social services law, subparagraph 1 of paragraph (g) of subdivision 6 as amended by chapter 3 of the laws of 2012 and subdivision 10 as amended by chapter 563 of the laws of 1986, are amended to read as follows:

(1) Place children in its care and custody or its custody and guardianship, in suitable instances, in **supervised settings,** family homes, agency boarding homes, group homes or institutions under the proper safeguards. Such placements can be made either directly, or through an authorized agency, except that, direct placements in agency boarding homes or group homes may be made by the social services district only if the office of children and family services has authorized the district to operate such homes in accordance with the provisions of section three hundred seventy-four-b of this [~~chapter~~] **article** and only if suitable care is not otherwise available through an authorized agency under the control of persons of the same religious faith as the child. Where such district places a child in [~~an~~] **a supervised setting,** agency boarding home, group home or institution, either directly, or through an authorized agency, the district shall certify in writing to the office of

children and family services, that such placement was made because it offers the most appropriate and least restrictive level of care for the child, and, is more appropriate than a family foster home placement, or, that such placement is necessary because there are no qualified foster families available within the district who can care for the child. If placements in agency boarding homes, group homes or institutions are the result of a lack of foster parents within a particular district, the office of children and family services shall assist such district to recruit and train foster parents. Placements shall be made only in institutions visited, inspected and supervised in accordance with title three of article seven of this chapter and conducted in conformity with the applicable regulations of the supervising state agency in accordance with title three of article seven of this chapter. With the approval of the office of children and family services, a social services district may place a child in its care and custody or its custody and guardianship in a federally funded job corps program and may receive reimbursement for the approved costs of appropriate program administration and supervision pursuant to a plan developed by the department and approved by the director of the budget.

10. Any provision of this chapter or any other law notwithstanding, where a foster child for whom a social services official has been making foster care payments is in attendance at a college or university away from his **or her** foster family boarding home, group home, agency boarding home or institution, **and residing in a supervised setting or other approved location,** a social services official may make foster payments, [~~not to exceed the amount which would have been paid to a foster parent on behalf of said child had the child been cared for in a foster family boarding home~~] **at a rate to be developed by the office of children and family services**, to such college or university**, provider of room and board, or youth, as appropriate,** in lieu of payment to the foster parents or authorized agency, for the purpose of room and board, if not otherwise provided. **Such rate shall be no lower than the rate paid for a child's care in a foster family boarding home.**

§ 3. The social services law is amended by adding a new section 409-h to read as follows:

§ 409-h. Assessment of appropriateness of placement in a qualified residential treatment program. 1. (a) Prior to a child's placement in a qualified residential treatment program, as defined in subdivision four of this section, but at least within thirty days of the start of a placement in a qualified residential treatment program of a child in the care and custody or the custody and guardianship of the commissioner of a local social services district or the office of children and family services that occurs on or after September twenty-ninth, two thousand twenty-one, a qualified individual as defined in subdivision five of this section shall complete an assessment as to the appropriateness of such placement utilizing an age-appropriate, evidence-based, validated, functional assessment tool approved by the federal government for such purpose. Such assessment shall be in accordance with 42 United States Code sections 672 and 675a and the state's approved title IV-E state plan and shall include, but not be limited to: (i) an assessment of the strengths and needs of the child; and (ii) a determination of the most effective and appropriate level of care for the child in the least restrictive setting, including whether the needs of the child can be met with family members or through placement in a foster family home, or in a setting specified in paragraph (c) of this subdivision, consistent with the short-term and long-term goals for the child as specified in the child's permanency plan. Such assessment shall be completed in conjunction with the family and permanency team established pursuant to paragraph (b) of this subdivision.

(b) The family and permanency team shall consist of all appropriate biological family members, relatives, and fictive kin of the child, as

well as, as appropriate, professionals who are a resource to the family of the child, including but not limited to, the attorney for the child or the attorney for the parent if applicable, teachers, medical or mental health providers who have treated the child, or clergy. In the case of a child who has attained the age of fourteen, the family and permanency team shall include the members of the permanency planning team for the child in accordance with 42 United States Code section 675 and the state's approved title IV-E state plan.

(c) Where the qualified individual determines that the child may not be placed in a foster family home, the qualified individual must specify in writing the reasons why the needs of the child cannot be met by the child's family or in a foster family home. A shortage or lack of foster family homes shall not constitute circumstances warranting a determination that the needs of the child cannot be met in a foster family home. The qualified individual shall also include why such a placement is not the most effective and appropriate level of care for such child. Such determination shall include whether the needs of the child can be met through placement in:

(i) An available supervised setting, as such term is defined in section three hundred seventy-one of this article;

(ii) If the child has been found to be, or is at risk of becoming, a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of this article, a setting providing residential care and supportive services for sexually exploited children;

(iii) A setting specializing in providing prenatal, post-partum or parenting supports for youth; or

(iv) A qualified residential treatment program.

2. The qualified individual or their designee shall promptly, but no later than five days following the completion of the assessment, provide the assessment, determination and documentation pursuant to subdivision

one of this section to the court, the parent or guardian of the child, and to the attorney for the child and the attorney for the parent, if applicable, and a written summary detailing the assessment findings required pursuant to subdivision one of this section to either the local social services district or the office of children and family services that has care and custody or custody and guardianship of the child, as applicable, and the parties to the proceeding, redacting any information necessary to comply with federal and state confidentiality laws.

3. Where the qualified individual determines that the placement of the child in a qualified residential treatment program is not appropriate after the assessment conducted pursuant to subdivision one of this section, the child's placement shall continue until the court has an opportunity to hold a hearing to consider the qualified individual's assessment and make an independent determination required pursuant to section three hundred ninety-three of this article or sections 353.7, seven hundred fifty-six-b, one thousand fifty-five-c, one thousand nine-ty-one-a or one thousand ninety-seven of the family court act, as applicable. Provided however, nothing herein shall prohibit a motion from being filed pursuant to sections 355.1, seven hundred sixty-four or one thousand eighty-eight of the family court act, as applicable. If the appropriate party files such motion, the court shall hold a hearing, as required, and also complete the assessment required pursuant to section three hundred ninety-three of this article or sections 353.7, seven hundred fifty-six-b, one thousand fifty-five-c, one thousand ninety-one-a or one thousand ninety-seven of the family court act, as applicable, at the same time. The court shall consider all relevant and necessary information as required and make a determination about the appropriateness of the child's placement based on standards required pursuant to the applicable sections.

4. "Qualified residential treatment program" means a program that is a non-foster family residential program in accordance with 42 United State

Code sections 672 and 675a and the state's approved title IV-E state plan.

5. "Qualified individual" shall mean a trained professional or licensed clinician acting within their scope of practice who shall have current or previous relevant experience in the child welfare field. Provided however, such individual shall not be an employee of the office of children and family services, nor shall such person have a direct role in case management or case planning decision making authority for the child for whom such assessment is being conducted, in accordance with 42 United States Code sections 672 and 675a and the state's approved title IV-E state plan.

§ 4. The family court act is amended by adding a new section 353.7 to read as follows:

§ 353.7. Placement in qualified residential treatment programs. 1. The provisions of this section shall apply when a respondent is placed on or after September twenty-ninth, two thousand twenty-one and resides in a non-secure setting that is a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and whose care and custody were transferred to a local social services district or the office of children and family services in accordance with this article.

2. (a) When a respondent is in the care and custody of a local social services district or the office of children and family services pursuant to this article, such social services district or office shall report any anticipated placement of the respondent into a qualified residential

treatment program as defined in section four hundred nine-h of the social services law to the court and the attorneys for the parties, including the attorney for the respondent, forthwith, but not later than one business day following either the decision to place the respondent in the qualified residential treatment program or the actual date the placement change occurred, whichever is sooner. Such notice shall indicate the date that the initial placement or change in placement is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the placement change, the local social services district or office shall subsequently notify the court and the attorneys for the parties, including the attorney for the respondent, of the date the placement change occurred, such notice shall occur no later than one business day following the placement change.

(b) When a respondent whose legal custody was transferred to a local social services district or the office of children and family services in accordance with this article resides in a qualified residential treatment program as defined in section four hundred nine-h of the social services law, and where such respondent's initial placement or change in placement in such qualified residential treatment program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (a) of this subdivision and motion of the local social services district or the office of children and family services with legal custody of the respondent, the court shall schedule a court review to make an assessment and determination of such placement in accordance with subdivision three of this section. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the respondent in the qualified residential treatment program commenced.

3. (a) Within sixty days of the start of a placement of a respondent referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(i) Consider the assessment, determination, and documentation made by the qualified individual pursuant to section four hundred nine-h of the social services law;

(ii) Determine whether the needs of the respondent can be met through placement in a foster family home and, if not, whether placement of the respondent in a qualified residential treatment program provides the most effective and appropriate level of care for the respondent in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the respondent as specified in the respondent's permanency plan; and

(iii) Approve or disapprove the placement of the respondent in a qualified residential treatment program. Provided that, where a qualified individual determines that the placement of the respondent in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of the social services law, the court may only approve the placement of the respondent in the qualified residential treatment program if:

(A) the court finds, and states in the written order that:

(1) circumstances exist that necessitate the continued placement of the respondent in the qualified residential treatment program;

(2) there is not an alternative setting available that can meet the respondent's needs in a less restrictive environment; and

(3) that continued placement in the qualified residential treatment program serves the respondent's needs and best interests or the need for protection of the community; and

(B) the court's written order states the specific reasons why the court has made the findings required pursuant to clause (A) of this subparagraph.

(iv) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

(b) At the conclusion of the review, if the court disapproves placement of the respondent in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the respondent and direct the local social services district or office of children and family services, as applicable, to make such other arrangements for the respondent's care and welfare that is in the best interest of the respondent and in the most effective and least restrictive setting as the facts of the case may require. If a new placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

4. The court may, on its own motion, or the motion of any of the parties or the attorney for the respondent, proceed with the court review required pursuant to this section on the basis of the written records received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to clause (A) of subparagraph (iii) of paragraph (a) of subdivision three of this section and provide such written order to the parties and the attorney for the respondent expeditiously, but no later than five days.

5. Documentation of the court's determination pursuant to this section shall be recorded in the respondent's case record.

6. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such respondent, including but not limited to the respondent's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

§ 5. Section 355.5 of the family court act is amended by adding a new subdivision 10 to read as follows:

10. Where the respondent remains placed in a qualified residential treatment program, as defined in section four hundred nine-h of the

social services law, the commissioner of the local social services district or the office of children and family services with legal custody of the respondent shall submit evidence at the permanency hearing with respect to the respondent:

(a) demonstrating that ongoing assessment of the strengths and needs of the respondent cannot be met through placement in a foster family home, that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the respondent in the least restrictive environment, and that the placement is consistent with the short-term and long-term goals for the respondent, as specified in the respondent's permanency plan;

(b) documenting the specific treatment and service needs that will be met for the respondent in the placement and the length of time the respondent is expected to need the treatment or services; and

(c) documenting the efforts made by the local social services district or the office of children and family services with legal custody of the respondent to prepare the respondent to return home, or to be placed with a fit and willing relative, legal guardian or adoptive parent, or in a foster family home.

§ 6. Section 756-a of the family court act is amended by adding a new subdivision (h) to read as follows:

(h) Where the respondent remains placed in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, the commissioner of the local social services district with legal custody of the respondent shall submit evidence at the permanency hearing with respect to the respondent:

(i) demonstrating that ongoing assessment of the strengths and needs of the respondent continues to support the determination that the needs of the respondent cannot be met through placement in a foster family home, that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the respondent in the least restrictive environment, and that the placement is consistent with the short-term and long-term goals of the respondent, as specified in the respondent's permanency plan;

(ii) documenting the specific treatment or service needs that will be met for the respondent in the placement and the length of time the respondent is expected to need the treatment or services; and

(iii) documenting the efforts made by the local social services district with legal custody of the respondent to prepare the respondent to return home, or to be placed with a fit and willing relative, legal guardian or adoptive parent, or in a foster family home.

§ 7. The family court act is amended by adding a new section 756-b to read as follows:

§ 756-b. Court review of placement in a qualified residential treatment program. 1. The provisions of this section shall apply when a respondent is placed on or after September twenty-ninth, two thousand twenty-one and resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and whose care and custody were transferred to a local social services district in accordance with this part.

2. (a) When a respondent is in the care and custody of a local social services district pursuant to this part, such social services district shall report any anticipated placement of the respondent into a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, to the court and the attorneys for the parties, including the attorney for the respondent, forthwith, but not later than one business day following either the decision to place the respondent in the qualified residential treatment program or the actual date the placement change occurred, whichever is sooner. Such notice shall indicate the date that the initial placement or change in placement is anticipated to occur or the date the placement change

occurred, as applicable. Provided, however, if such notice lists an anticipated date for the placement change, the local social services district shall subsequently notify the court and the attorneys for the parties, including the attorney for the respondent, of the date the placement change occurred; such notice shall occur no later than one business day following the placement change.

(b) When a respondent whose legal custody was transferred to a local social services district in accordance with this part resides in a qualified residential treatment program, as defined in section four hundred

nine-h of the social services law, and where such respondent's initial placement or change in placement in such qualified residential treatment program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (a) of this subdivision and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with subdivision three of this section. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the respondent in the qualified residential treatment program commenced.

3. (a) Within sixty days of the start of a placement of a respondent referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(i) Consider the assessment, determination and documentation made by the qualified individual pursuant to section four hundred nine-h of the social services law;

(ii) Determine whether the needs of the respondent can be met through placement in a foster family home and, if not, whether placement of the respondent in a qualified residential treatment program provides the most effective and appropriate level of care for the respondent in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the respondent as specified in the respondent's permanency plan; and

(iii) Approve or disapprove the placement of the respondent in a qualified residential treatment program. Provided that, where the qualified individual determines that the placement of the respondent in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of the social services law, the court may only approve the placement of the respondent in the qualified residential treatment program if:

(A) the court finds, and states in the written order that:

(1) circumstances exist that necessitate the continued placement of the respondent in the qualified residential treatment program;

(2) there is not an alternative setting available that can meet the respondent's needs in a less restrictive environment; and

(3) that it would be contrary to the welfare of the respondent to be placed in a less restrictive setting and that continued placement in the qualified residential treatment program is in the respondent's best interest; and

(B) the court's written order states the specific reasons why the court has made the findings required pursuant to clause (A) of this subparagraph.

(iv) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

(b) At the conclusion of the review, if the court disapproves placement of the respondent in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the respondent and direct the local social services district to make such other arrangements for the respondent's care and welfare that is in the best interest of the respondent and in the most effective and least restrictive setting as the facts of the case may require. If a new

placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

4. The court may, on its own motion, or the motion of any of the parties or the attorney for the respondent, proceed with the court

review required pursuant to this section on the basis of the written records received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to clause (A) of subparagraph (iii) of paragraph (a) of subdivision three of this section and provide such written order to the parties and the attorney for the respondent expeditiously, but no later than five days.

5. Documentation of the court's determination pursuant to this section shall be recorded in the respondent's case record.

6. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such respondent, including but not limited to the respondent's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

§ 8. The opening paragraph of subdivision 5 of section 1017 of the family court act is designated paragraph (a) and a new paragraph (b) is added to read as follows:

(b) When a child whose legal custody was transferred to the commissioner of a local social services district in accordance with this section resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and where such child's initial placement or change in placement in such program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (a) of this subdivision and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with section one thousand fifty-five-c of this article. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the child in the qualified residential treatment program commenced.

§ 9. The opening paragraph of subdivision (j) of section 1055 of the family court act is designated paragraph (i) and a new paragraph (ii) is added to read as follows:

(ii) When a child whose legal custody was transferred to the commissioner of a local social services district in accordance with this section resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and where such child's initial placement or change in placement in such program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (i) of this subdivision and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with section one thousand fifty-five-c of this part. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the child in the qualified residential treatment program commenced.

§ 10. The family court act is amended by adding a new section 1055-c to read as follows:

§ 1055-c. Court review of placement in a qualified residential treatment program. 1. The provisions of this section shall apply when a child

is placed on or after September twenty-ninth, two thousand twenty-one and resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and whose care and custody were transferred to the commissioner of a local social services district in accordance with this article.

2. Within sixty days of the start of a placement of a child referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(a) Consider the assessment, determination, and documentation made by the qualified individual pursuant to section four hundred nine-h of the social services law;

(b) Determine whether the needs of the child can be met through placement in a foster family home and, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan; and

(c) Approve or disapprove the placement of the child in a qualified residential treatment program. Provided that, where the qualified individual determines that the placement of the child in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of the social services law, the court may only approve the placement of the child in the qualified residential treatment program if:

(i) the court finds, and states in the written order that:

(A) circumstances exist that necessitate the continued placement of the child in the qualified residential treatment program;

(B) there is not an alternative setting available that can meet the child's needs in a less restrictive environment; and

(C) that continued placement in the qualified residential treatment program is in the child's best interest; and

(ii) the court's written order states the specific reasons why the court has made the findings required pursuant to subparagraph (i) of this paragraph.

(d) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

3. At the conclusion of the review, if the court disapproves placement of the child in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the child and direct the local social services district to make such other arrangements for the child's care and welfare that is in the best interest of the child and in the most effective and least restrictive setting as the facts of the case may require. If a new placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

4. The court may, on its own motion, or the motion of any of the parties or the attorney for the child, proceed with the court review required pursuant to this section on the basis of the written records received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to subparagraph (i) of paragraph (c) of subdivision two of this section and

provide such written order to the parties and the attorney for the child expeditiously, but no later than five days.

5. Documentation of the court's determination pursuant to this section shall be recorded in the child's case record.

6. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such child, including but not limited to the child's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

§ 11. Clause (C) of subparagraph (ix) of paragraph 5 of subdivision (c) of section 1089 of the family court act, as added by section 27 of part A of chapter 3 of the laws of 2005, is amended, and a new paragraph 6 is added to read as follows:

(C) if the child is over age fourteen and has voluntarily withheld his or her consent to an adoption, the facts and circumstances regarding the child's decision to withhold consent and the reasons therefor[~~.~~]**; and**

(6) Where the child remains placed in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, the commissioner of the social services district with legal custody of the child shall submit evidence at the permanency hearing with respect to the child:

(i) demonstrating that ongoing assessment of the strengths and needs of the child continues to support the determination that the needs of the child cannot be met through placement in a foster family home, that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment, and that the placement is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan;

(ii) documenting the specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services; and

(iii) documenting the efforts made by the local social services district to prepare the child to return home, or to be placed with a fit and willing relative, legal guardian or adoptive parent, or in a foster family home.

§ 12. The opening paragraph of clause (H) of subparagraph (vii) of paragraph 2 of subdivision (d) of section 1089 of the family court act is designated item (I) and a new item (II) is added to read as follows:

(II) When a child whose legal custody was transferred to the commissioner of a local social services district in accordance with this section resides in a qualified residential treatment program as defined in section four hundred nine-h of the social services law and where such child's initial placement or change in placement in such program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to item (I) of this clause and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with section three hundred ninety-three of the social services law or section one thousand fifty-five-c, one thousand ninety-one-a or one thousand ninety-seven of this chapter. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the child in the qualified residential treatment program commenced.

§ 13. The family court act is amended by adding a new section 1091-a to read as follows:

§ 1091-a. Court review of placement in a qualified residential treatment program. 1. The provisions of this section shall apply when a former foster care youth is placed on or after September twenty-ninth, two thousand twenty-one, and resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and whose care and custody were transferred to a local social services district or the office of children and family services in accordance with this article.

2. (a) When a former foster care youth is in the care and custody of a

local social services district or the office of children and family services pursuant to this article, such social services district or office shall report any anticipated placement of the former foster care youth into a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, to the court and the attorneys for the parties, including the attorney for the former foster care youth, forthwith, but not later than one business day following either the decision to place the former foster care youth in the qualified residential treatment program or the actual date the placement change occurred, whichever is sooner. Such notice shall indicate the date that the initial placement or change in placement is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the placement change, the local social services district or office shall subsequently notify the court and attorneys for the parties, including the attorney for the former foster care youth, of the date the placement change occurred; such notice shall occur no later than one business day following the placement change.

(b) When a former foster care youth whose legal custody was transferred to a local social services district or the office of children and family services in accordance with this article resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and where such former foster care youth's initial placement or change in placement in such qualified residential treatment program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (a) of this subdivision and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with subdivision three of this section. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the former foster care youth in the qualified residential treatment program commenced.

3. Within sixty days of the start of a placement of a former foster care youth referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(a) Consider the assessment, determination, and documentation made by the qualified individual pursuant to section four hundred nine-h of the social services law;

(b) Determine whether the needs of the former foster care youth can be met through placement in a foster family home and, if not, whether placement of the former foster care youth in a qualified residential treatment program provides the most effective and appropriate level of care for the former foster care youth in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the former foster care youth, as specified in the former foster care youth's permanency plan; and

(c) Approve or disapprove the placement of the former foster care youth in a qualified residential treatment program. Provided that, where the qualified individual determines that the placement of the former foster care youth in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of the social services law, the court may only approve the placement of the former foster care youth in the qualified residential treatment program if:

(i) the court finds, and states in the written order that:

(A) circumstances exist that necessitate the continued placement of the former foster care youth in the qualified residential treatment program;

(B) there is not an alternative setting available that can meet the former foster care youth's needs in a less restrictive environment; and

(C) that continued placement in the qualified residential treatment program is in the former foster care youth's best interest; and

(ii) the court's written order states the specific reasons why the court has made the findings required pursuant to subparagraph (i) of this paragraph.

(d) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

4. At the conclusion of the review, if the court disapproves placement of the former foster care youth in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the former foster care youth and direct the local social services district or office of children and family services, as applicable, to make such other arrangements for the former foster care youth's care and welfare that is in the best interest of the former foster care youth and in the most effective and least restrictive setting as the facts of the case may require. If a new placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

5. The court may, on its own motion, or the motion of any of the parties or the attorney for the former foster care youth, proceed with the court review required pursuant to this section on the basis of the written records received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to subparagraph (i) of paragraph (c) of subdivision three of this section and provide such written order to the parties and the attorney for the former foster care youth expeditiously, but no later than five days.

6. Documentation of the court's determination pursuant to this section shall be recorded in the former foster care youth's case record.

7. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such former foster care youth, including but not limited to the former foster care youth's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

§ 14. The family court act is amended by adding a new section 1097 to read as follows:

§ 1097. Court review of placement in a qualified residential treatment program. 1. The provisions of this section shall apply when a child is placed on or after September twenty-ninth, two thousand twenty-one, and resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and whose care and custody were transferred to a local social services district in accordance with this article.

2. (a) When a child is in the care and custody of a local social services district pursuant to this article, such social services district shall report any anticipated placement of the child into a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, to the court and the attorneys for the parties, including the attorney for the child, forthwith, but not later than one business day following either the decision to place the child in the qualified residential treatment program or the actual date the placement change occurred, whichever is sooner. Such notice shall indicate the date that the initial placement or change in placement is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the placement change, the local social services

district shall subsequently notify the court and attorneys for the parties, including the attorney for the child, of the date the placement change occurred, such notice shall occur no later than one business day following the placement change.

(b) When a child whose legal custody was transferred to a local social services district in accordance with this article resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and where such child's initial placement or change in placement in such qualified residential treatment program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (a) of this subdivision and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with subdivision three of this section. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the child in the qualified residential treatment program commenced.

3. Within sixty days of the start of a placement of a child referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(a) Consider the assessment, determination, and documentation made by the qualified individual pursuant to section four hundred nine-h of the social services law;

(b) Determine whether the needs of the child can be met through placement in a foster family home and, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan; and

(c) Approve or disapprove the placement of the child in the qualified residential treatment program. Provided that, where the qualified individual determines that the placement of the child in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of the

social services law, the court may only approve the placement of the child in the qualified residential treatment program if:

(i) the court finds, and states in the written order that:

(A) circumstances exist that necessitate the continued placement of the child in the qualified residential treatment program;

(B) there is not an alternative setting available that can meet the child's needs in a less restrictive environment; and

(C) that continued placement in the qualified residential treatment program is in the child's best interest; and

(ii) the court's written order states the specific reasons why the court has made the findings required pursuant to subparagraph (i) of this paragraph.

(d) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

4. At the conclusion of the review, if the court disapproves placement of the child in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the child and direct the local social services district to make such other arrangements for the child's care and welfare that is in the best interest of the child and in the most effective and least restrictive setting as the facts of the case may require. If a new placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

5. The court may, on its own motion, or the motion of any of the parties or the attorney for the child, proceed with the court review required pursuant to this section on the basis of the written records

received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to subparagraph (i) of paragraph (c) of subdivision three of this section and provide such written order to the parties and the attorney for the child expeditiously, but no later than five days.

6. Documentation of the court's determination pursuant to this section shall be recorded in the child's case record.

7. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such child, including but not limited to the child's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

§ 15. The office of children and family services, beginning one year after the effective date of this act and annually thereafter, shall make the following information publicly available on its website:

1. the total number of youth placed in a qualified residential treatment program whose placement was determined to be inappropriate;

2. the total number of youth placed in a qualified residential treatment program whose placement was determined to be appropriate; and

3. any other information the office deems appropriate to assess the effectiveness of the implementation of the family first prevention services act.

§ 16. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 17. This act shall take effect September 29, 2021; provided, however, that the provisions of section fifteen of this act shall expire and be deemed repealed December 31, 2026; and provided, further, that:

(a) (i) notwithstanding any other provision of law, provisions in this act shall not take effect unless and until the state title IV-E agency submits to the United States Department of Health and Human Services, Administration for Children, Youth and Families, an amendment to the title IV-E state plan and the United States Department of Health and Human Services, Administration for Children, Youth and Families approves said title IV-E state plan amendment regarding when a child is placed in a qualified residential treatment program in relation to the following components: (1) the qualified individual and the establishment of the assessment by the qualified individual to be completed prior to or within 30-days of the child's placement as established by section three of this act; (2) the 60 day court reviews, including the ability to conduct at the same time as another hearing scheduled for the child, as established by sections one, two, four, seven, eight, nine, ten, twelve, thirteen and fourteen of this act; and (3) permanency hearing requirements as established by sections five, six and eleven of this act;

(ii) provided however, that if the United States Department of Health and Human Services, Administration for Children, Youth and Families fails to approve or disapproves any of the components listed in paragraph (i) of this subdivision, such action shall not impact the effective date for the remaining components listed therein;

(b) the office of children and family services shall inform the legislative bill drafting commission upon the occurrence of the submission set forth in subdivision (a) of this section and any approval related thereto in order that the commission may maintain an effective and time-

ly database of the official texts of the state of laws of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law;

(c) for the purposes of this act, the term "placement" shall refer only to placements made on or after the effective date of the Title IV-E state plan to establish the 30-day assessment, 60-day court review and permanency hearing requirements set forth in this act that occur on or after its effective date; and

(d) the office of children and family services and the office of court administration are hereby authorized to promulgate such rules and regulations on an emergency basis as may be necessary to implement the provisions of this act on or before such effective date.

PART M

Intentionally Omitted

PART V

Intentionally Omitted

PART JJ

Section 1. This Part enacts into law major components of legislation which are related to the availability of adverse childhood experiences services. Each component is wholly contained within a Subpart identified as Subparts A and B. The effective date for each particular provision contained within such Subpart is set forth in the last section of such Subpart. Any provision in any section contained within a Subpart, including the effective date of the Subpart, which makes reference to a section of "this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Subpart in which it is found. Section two contains a severability clause for all provisions contained in each Subpart of this Part. Section three of this act sets forth the general effective date of this Part.

SUBPART A

Section 1. The social services law is amended by adding a new section 131-aaa to read as follows:

§ 131-aaa. Availability of adverse childhood experiences services. Each local social services district shall be required to make available to applicants and recipients of public assistance who are a parent, guardian, custodian or otherwise responsible for a child's care, educational materials developed pursuant to subdivision two of section three hundred seventy-c of this article to educate them about adverse childhood experiences, the importance of protective factors and the availability of services for children at risk for or suffering from adverse childhood experiences. The educational materials may be made available electronically and shall be offered at the time of application and recertification.

§ 2. Article 5 of the social services law is amended by adding a new title 12-A to read as follows:

TITLE 12-A

SUPPORTS AND SERVICES FOR YOUTH SUFFERING FROM ADVERSE CHILDHOOD EXPERIENCES

Section 370-c. Supports and services for youth suffering from adverse childhood experiences.

STATE OF NEW YORK

S. 2009--C A. 3009--C

SENATE - ASSEMBLY

January 23, 2017

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT intentionally omitted (Part A); intentionally omitted (Part B); to amend the tax law and the administrative code of the city of New York, in relation to the school tax reduction credit for residents of a city with a population of one million or more; and to repeal section 54-f of the state finance law relating thereto (Part C); intentionally omitted (Part D); intentionally omitted (Part E); to amend the real property tax law, in relation to authorizing partial payments of property taxes (Part F); to amend the tax law, in relation to the STAR personal income tax credit (Part G); to amend the real property tax law and the tax law, in relation to the applicability of the STAR credit to cooperative apartment corporations; and repealing certain provisions of the tax law relating thereto (Part H); to amend chapter 540 of the laws of 1992, amending the real property tax law relating to oil and gas charges, in relation to the effectiveness thereof (Part I); to amend the state finance law, in relation to the veterans' home assistance fund (Part J); to amend the economic development law and the tax law, in relation to life sciences companies (Part K); to amend the economic development law, in relation to the employee training incentive program (Part L); to amend the tax law, in relation to extending the empire state film production credit and empire state

EXPLANATION--Matter in <u>italics</u> (underscored) is new; matter in brackets [ ] is old law to be omitted.

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film post production credit for three years (Part M); to amend the labor law and the tax law, in relation to a program to provide tax incentives for employers employing at risk youth (Subpart A); and to amend the labor law and the tax law, in relation to establishing the empire state apprenticeship tax credit program (Subpart B) (Part N); to amend the tax law, in relation to extending the alternative fuels and electric vehicle recharging property credit for five years (Part O); to amend the tax law, in relation to the investment tax credit (Part P); to amend the tax law, in relation to the treatment of single member limited liability companies that are disregarded entities in determining eligibility for tax credits (Part Q); to amend the tax law, in relation to extending the top personal income tax rate for two years; and to repeal subparagraph (B) of paragraph 1 of subsection (a), subparagraph (B) of paragraph 1 of subsection (b) and subparagraph (B) of paragraph 1 of subsection (c) of section 601 of the tax law, relating to the imposition of tax (Part R); to amend the tax law and the administrative code of the city of New York, in relation to extending the high income charitable contribution deduction limitation (Part S); to amend the tax law, in relation to increasing the child and dependent care tax credit (Part T); to amend the tax law, in relation to the financial institution data match system for state tax collection purposes; and providing for the repeal of such provisions upon expiration thereof (Part U); intentionally omitted (Part V); intentionally omitted (Part W); to amend chapter 59 of the laws of 2013, amending the tax law relating to serving an income execution with respect to individual tax debtors without filing a warrant, in relation to extending the provisions authorizing service of income executions on individual tax debtors without filing a warrant (Part X); intentionally omitted (Part Y); to amend the tax law, in relation to the definition of New York source income (Part Z); to amend the tax law, in relation to closing the nonresident partnership asset sale loophole (Part AA); intentionally omitted (Part BB); to amend the tax law, in relation to closing the existing tax loopholes for transactions between related entities under article 28 and pursuant to the authority of article 29 of such law (Part CC); to amend the tax law, in relation to clarifying the imposition of sales tax on gas service or electric service of whatever nature (Part DD); intentionally omitted (Part EE); intentionally omitted (Part FF); intentionally omitted (Part GG); intentionally omitted (Part HH); intentionally omitted (Part II); intentionally omitted (Part JJ); intentionally omitted (Part KK); to amend the racing, pari-mutuel wagering and breeding law, in relation to modifying the funding of and improve the operation of drug testing in horse racing (Part LL); to amend the executive law, in relation to the powers and duties of the state bingo control commission; and to amend the general municipal law, in relation to bingo games (Part MM); to amend the racing, pari-mutuel wagering and breeding law, in relation to allowing for the reprivatization of NYRA (Part NN); to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting; to amend chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to

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extending certain provisions thereof; and to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part OO); to amend the tax law, in relation to vendor fees paid to vendor tracks (Part PP); to amend the tax law, in relation to capital awards to vendor tracks (Part QQ); intentionally omitted (Part RR); to amend the racing, pari-mutuel wagering and breeding law and the workers' compensation law, in relation to the New York Jockey Injury Compensation Fund, Inc. (Part SS); to amend the tax law and the real property tax law, in relation to changing the calculation of STAR credit (Part TT); to amend the tax law, in relation to the prepaid sales tax on motor fuel and diesel motor fuel under article 28 thereof (Part UU); to amend the tax law and the administrative code of the city of New York, in relation to qualified financial instruments of RICS and REITS (Part VV); to amend the tax law, in relation to exempting certain monuments from sales and use taxes (Part WW); to amend the New York state urban development corporation act, in relation to certain qualified entities (Part XX); to amend the economic development law, in relation to excelsior research and development tax credits (Part YY); to amend the economic development law, in relation to eligibility to participate in the excelsior jobs program (Part ZZ); to amend the vehicle and traffic law, the insurance law, the executive law, the general municipal law and the tax law, in relation to the regulation of transportation network company services; to establish the New York State TNC Accessibility Task Force and the New York state transportation network company review board; and providing for the repeal of certain provisions relating thereto (Part AAA); to establish the county-wide shared services property tax savings law (Part BBB); to amend chapter 261 of the laws of 1988, amending the state finance law and other laws relating to the New York state infrastructure trust fund, in relation to the minority and women-owned business enterprise program (Part CCC); to amend the tax law, in relation to the establishment of a tax credit for farm donations to food pantries (Part DDD); to amend the tax law, in relation to the imposition of a surcharge on prepaid wireless communications service and to repeal certain provisions of the county law relating thereto (Part EEE); to amend the public health law, in relation to the health care facility transformation program (Part FFF); to amend the public health law, in relation to managed long term care plans and demonstrations (Part GGG); to amend the education law, in relation to establishing the excelsior scholarship (Part HHH); to amend the education law, in relation to establishing enhanced tuition assistance program awards (Part III); to amend the education law, in relation to the NY-SUNY 2020 challenge grant program act; and to amend chapter 260 of the laws of 2011, amending the education law and the New York state urban development corporation act relating to establishing components of the NY-SUNY 2020 challenge grant program, in relation to the effectiveness thereof (Part JJJ); to amend the education law, in relation to a New York state part-time scholarship award program (Part KKK); requiring the president of the higher education services corporation to report on options to make college more affordable for New York students and providing for the repeal of such provisions upon expiration thereof (Part LLL); to amend the education law, in relation to establishing the New York state child welfare worker incentive scholarship program and the New York state child welfare worker loan forgiveness incentive program (Part MMM); to amend the workers' compensation law, in relation to the schedule of compen-

sation in the case of injury, and in relation to appeals (Subpart A); to amend the workers' compensation law, in relation to requiring the drafting of permanency impairment guidelines (Subpart B); to amend the workers' compensation law, in relation to a comprehensive pharmacy benefit plan and prescription drug formulary (Subpart C); to amend the workers' compensation law, in relation to penalties for failure to pay compensation (Subpart D); to amend the workers' compensation law, in relation to assumption of workers' compensation liability policies (Subpart E); to amend chapter 11 of the laws of 2008 amending the workers' compensation law, the insurance law, the volunteer ambulance workers' benefit law and the volunteer firefighters' benefit law relating to rates for workers' compensation insurance and setting forth conditions for workers' compensation rate service organization, in relation to the effectiveness thereof; and to amend the insurance law, in relation to workers' compensation rate service organizations (Subpart F); to amend the workers' compensation law, in relation to requiring a study on independent medical examinations (Subpart G); and to amend the workers' compensation law, in relation to security for payment of compensation (Subpart H); to amend the workers' compensation law, in relation to liability for compensation (Subpart I); and to amend the workers' compensation law, in relation to assessments for annual expenses; and providing for the repeal of certain provisions upon expiration thereof (Subpart J) (Part NNN); to amend the tax law, in relation to allowing an additional New York itemized deduction for union dues not included in federal itemized deductions (Part OOO); to amend the executive law and the criminal procedure law, in relation to the establishment of the office of the inspector general of New York for transportation (Part PPP); authorizing the transfer of certain expenditures and disbursements; and to repeal a chapter of the laws of 2017 making appropriations for the support of government, as proposed in legislative bills numbers S.5492 and A.7068 relating thereto (Part QQQ); to amend the infrastructure investment act, in relation to the definition of an authorized entity that may utilize design-build contracts, and in relation to the effectiveness thereof (Part RRR); to amend the retirement and social security law, in relation to disability benefits for certain members of the New York city police pension fund (Part SSS); to amend the real property tax law, in relation to the affordable New York housing program and to repeal certain provisions of such law relating thereto (Part TTT); to amend the economic development law, in relation to comprehensive economic development reporting; and to repeal section 438 of the economic development law relating thereto (Part UUU); to amend the criminal procedure law, the family court act and the executive law, in relation to statements of those accused of crimes and eyewitness identifications, to enhance criminal investigations and prosecutions and to promote confidence in the criminal justice system of this state; to amend the county law and the executive law, in relation to the implementation of a plan regarding indigent legal services (Part VVV); to amend the criminal procedure law, the penal law, the executive law, the family court act, the social services law, the correction law, the county law and the state finance law, in relation to proceedings against juvenile and adolescent offenders and the age of juvenile and adolescent offenders and to repeal certain provisions of the criminal procedure law relating thereto (Part WWW); to provide for the administration of certain funds and accounts related to the 2017-18 budget and authorizing certain payments and transfers; to amend the state finance law, in

relation to the school tax relief fund and payments, transfers and deposits; to amend chapter 62 of the laws of 2003 amending the general business law and other laws relating to implementing the state fiscal plan for the 2003-2004 state fiscal year, in relation to the deposit provisions of the tobacco settlement financing corporation act; to amend the state finance law, in relation to establishing the retiree health benefit trust fund; to amend chapter 174 of the laws of 1968 constituting the New York state urban development corporation act, in relation to funding project costs undertaken by non-public schools; to amend the New York state urban development corporation act, in relation to funding project costs for certain capital projects; to amend chapter 389 of the laws of 1997, relating to the financing of the correctional facilities improvement fund and the youth facility improvement fund, in relation to the issuance of bonds; to amend the private housing finance law, in relation to housing program bonds and notes; to amend chapter 329 of the laws of 1991, amending the state finance law and other laws relating to the establishment of the dedicated highway and bridge trust fund, in relation to the issuance of bonds; to amend the public authorities law, in relation to the issuance of bonds by the dormitory authority; to amend chapter 61 of the laws of 2005 relating to providing for the administration of certain funds and accounts related to the 2005-2006 budget, in relation to issuance of bonds by the urban development corporation; to amend the New York state urban development corporation act, in relation to the issuance of bonds; to amend the public authorities law, in relation to the state environmental infrastructure projects; to amend the New York state urban development corporation act, in relation to authorizing the urban development corporation to issue bonds to fund project costs for the implementation of a NY-CUNY challenge grant program and increasing the bonding limit for certain state and municipal facilities; to amend chapter 61 of the laws of 2005, relating to providing for the administration of certain funds and accounts related to the 2005-2006 budget, in relation to increasing the bonding limit for certain public protection facilities; to amend chapter 81 of the laws of 2002, relating to providing for the administration of certain funds and accounts related to the 2002-2003 budget, in relation to increasing the aggregate amount of bonds to be issued by the New York state urban development corporation; to amend the public authorities law, in relation to financing of peace bridge and transportation capital projects; to amend the public authorities law, in relation to dormitories at certain educational institutions other than state operated institutions and statutory or contract colleges under the jurisdiction of the state university of New York; to amend the New York state medical care facilities finance agency act, in relation to bonds and mental health facilities improvement notes; to amend the state finance law and the public authorities law, in relation to funding certain capital projects and the issuance of bonds; to repeal sections 58, 59 and 60 of the state finance law relating thereto; and providing for the repeal of certain provisions upon expiration thereof (Part XXX); and to amend the education law, in relation to contracts for excellence and the apportionment of public moneys; to amend the education law, in relation to requiring the commissioner of education to include certain information in the official score report of all students; to amend the education law, in relation to charter school tuition and facility aid for charter schools; relating to apportionment to the Haverstraw-Stony Point central school district; relating to penalties

neys, investigators and other non-attorney staff and the amount of in-kind resources necessary for each provider of mandated representation to implement such plan.

(iii) Each county and the city of New York shall, in consultation with the office, undertake good faith efforts to implement the caseload/workload standards and such standards shall be fully implemented and adhered to in each county and the city of New York by April first, two thousand twenty-three. Pursuant to section seven hundred twenty-two-e of the county law, the state shall reimburse each county and the city of New York for any costs incurred as a result of implementing such plan.

(iv) The office shall, on an ongoing basis, monitor and periodically report on the implementation of, and compliance with, the plan in each county and the city of New York.

(c) Initiatives to improve the quality of indigent defense. (i) Develop and implement a written plan to improve the quality of constitutionally mandated publicly funded representation in criminal cases for people who are unable to afford counsel and ensure that attorneys providing such representation: (A) receive effective supervision and training; (B) have access to and appropriately utilize investigators, interpreters and expert witnesses on behalf of clients; (C) communicate effectively with their clients; (D) have the necessary qualifications and experience; and (E) in the case of assigned counsel attorneys, are assigned to cases in accordance with article eighteen-b of the county law and in a manner that accounts for the attorney's level of experience and caseload/workload.

(ii) The office shall, on an ongoing basis, monitor and periodically report on the implementation of, and compliance with, the plan in each county and the city of New York.

(iii) The written plan developed pursuant to this subdivision shall be completed by December first, two thousand seventeen and shall include interim steps for each county and the city of New York for achieving compliance with the plan.

(iv) Each county and the city of New York shall, in consultation with the office, undertake good faith efforts to implement the initiatives to improve the quality of indigent defense and such initiatives shall be fully implemented and adhered to in each county and the city of New York by April first, two thousand twenty-three. Pursuant to section seven hundred twenty-two-e of the county law, the state shall reimburse each county and the city of New York for any costs incurred as a result of implementing such plan.

(d) Appropriation of funds. In no event shall a county and a city of New York be obligated to undertake any steps to implement the written plans under paragraphs (a), (b) and (c) of this subdivision until funds have been appropriated by the state for such purpose.

§ 13. This act shall take effect immediately; provided, however, that sections one and two of this act shall take effect April 1, 2018 and shall apply to confessions, admissions or statements made on or after such effective date; provided, further sections three through ten of this act shall take effect July 1, 2017.

PART WWW

Section 1. Section 1.20 of the criminal procedure law is amended by adding a new subdivision 44 to read as follows:

44. "Adolescent offender" means a person charged with a felony committed on or after October first, two thousand eighteen when he or she was sixteen years of age or on or after October first, two thousand nineteen, when he or she was seventeen years of age.

§ 1-a. The criminal procedure law is amended by adding a new article 722 to read as follows:

ARTICLE 722

PROCEEDINGS AGAINST JUVENILE OFFENDERS AND ADOLESCENT OFFENDERS; ESTABLISHMENT OF YOUTH PART AND RELATED PROCEDURES

Section 722.00 Probation case plans.
722.10 Youth part of the superior court established.
722.20 Proceedings upon felony complaint; juvenile offender.
722.21 Proceedings upon felony complaint; adolescent offender.
722.22 Motion to remove juvenile offender to family court.
722.23 Removal of adolescent offenders to family court.
722.24 Applicability of chapter to actions and matters involving juvenile offenders or adolescent offenders.

§ 722.00 Probation case plans.

1. All juvenile offenders and adolescent offenders shall be notified of the availability of services through the local probation department. Such services shall include the ability of the probation department to conduct a risk and needs assessment, utilizing a validated risk assessment tool, in order to help determine suitable and individualized programming and referrals. Participation in such risk and needs assessment shall be voluntary and the adolescent offender or juvenile offender may be accompanied by counsel during any such assessment. Based upon the assessment findings, the probation department shall refer the adolescent offender or juvenile offender to available and appropriate services.

2. Nothing shall preclude the probation department and the adolescent offender or juvenile offender from entering into a voluntary service plan which may include alcohol, substance use and mental health treatment and services. To the extent practicable, such services shall continue through the pendency of the action and shall further continue where such action is removed in accordance with this article.

3. When preparing a pre-sentence investigation report of any such adolescent offender or juvenile offender, the probation department shall incorporate a summary of any assessment findings, referrals and progress with respect to mitigating risk and addressing any identified needs.

4. The probation service shall not transmit or otherwise communicate to the district attorney or the youth part any statement made by the juvenile or adolescent offender to a probation officer. However, the probation service may make a recommendation regarding the completion of his or her case plan to the youth part and provide such information as it shall deem relevant.

5. No statement made to the probation service may be admitted into evidence at a fact-finding hearing at any time prior to a conviction.

§ 722.10 Youth part of the superior court established.

1. The chief administrator of the courts is hereby directed to establish, in a superior court in each county of the state, a part of the court to be known as the youth part of the superior court for the county in which such court presides. Judges presiding in the youth part shall be family court judges, as described in article six, section one of the constitution. To aid in their work, such judges shall receive training in specialized areas, including, but not limited to, juvenile justice,

adolescent development, custody and care of youths and effective treatment methods for reducing unlawful conduct by youths, and shall be authorized to make appropriate determinations within the power of such superior court with respect to the cases of youths assigned to such part. The youth part shall have exclusive jurisdiction in all proceedings in relation to juvenile offenders and adolescent offenders, except as provided in this article or article seven hundred twenty-five of this chapter.

2. The chief administrator of the courts shall also direct the presiding justice of the appellate division, in each judicial department of the state, to designate judges authorized by law to exercise criminal jurisdiction to serve as accessible magistrates, for the purpose of acting in place of the youth part for certain first appearance proceedings involving youths, as provided by law. When designating such magistrates, the presiding justice shall ensure that all areas of a county are within a reasonable distance of a designated magistrate. A judge authorized to preside as such a magistrate shall have received training in specialized areas, including, but not limited to, juvenile justice, adolescent development, custody and care of youths and effective treatment methods for reducing unlawful conduct by youths.

§ 722.20 Proceedings upon felony complaint; juvenile offender.

1. When a juvenile offender is arraigned before a youth part, the provisions of this section shall apply. If the youth part is not in session, the defendant shall be brought before the most accessible magistrate designated by the appellate division of the supreme court to act as a youth part for the purpose of making a determination whether such juvenile shall be detained. If the defendant is ordered to be detained, he or she shall be brought before the next session of the youth part. If the defendant is not detained, he or she shall be ordered to appear at the next session of the youth part.

2. If the defendant waives a hearing upon the felony complaint, the court must order that the defendant be held for the action of the grand jury with respect to the charge or charges contained in the felony complaint.

3. If there be a hearing, then at the conclusion of the hearing, the youth part court must dispose of the felony complaint as follows:

(a) If there is reasonable cause to believe that the defendant committed a crime for which a person under the age of sixteen is criminally responsible, the court must order that the defendant be held for the action of a grand jury; or

(b) If there is not reasonable cause to believe that the defendant committed a crime for which a person under the age of sixteen is criminally responsible but there is reasonable cause to believe that the defendant is a "juvenile delinquent" as defined in subdivision one of section 301.2 of the family court act, the court must specify the act or acts it found reasonable cause to believe the defendant did and direct that the action be removed to the family court in accordance with the provisions of article seven hundred twenty-five of this title; or

(c) If there is not reasonable cause to believe that the defendant committed any criminal act, the court must dismiss the felony complaint and discharge the defendant from custody if he is in custody, or if he is at liberty on bail, it must exonerate the bail.

4. Notwithstanding the provisions of subdivisions two and three of this section, the court shall, at the request of the district attorney, order removal of an action against a juvenile offender to the family court pursuant to the provisions of article seven hundred twenty-five of

this title if, upon consideration of the criteria specified in subdivision two of section 722.22 of this article, it is determined that to do so would be in the interests of justice. Where, however, the felony complaint charges the juvenile offender with murder in the second degree as defined in section 125.25 of the penal law, rape in the first degree as defined in subdivision one of section 130.35 of the penal law, criminal sexual act in the first degree as defined in subdivision one of section 130.50 of the penal law, or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20 of this chapter, a determination that such action be removed to the family court shall, in addition, be based upon a finding of one or more of the following factors: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution; or (iii) possible deficiencies in proof of the crime.

5. Notwithstanding the provisions of subdivision two, three, or four of this section, if a currently undetermined felony complaint against a juvenile offender is pending, and the defendant has not waived a hearing pursuant to subdivision two of this section and a hearing pursuant to subdivision three of this section has not commenced, the defendant may move to remove the action to family court pursuant to 722.22 of this article. The procedural rules of subdivisions one and two of section 210.45 of this chapter are applicable to a motion pursuant to this subdivision. Upon such motion, the court shall proceed and determine the motion as provided in section 722.22 of this article; provided, however, that the exception provisions of paragraph (b) of subdivision one of section 722.22 of this article shall not apply when there is not reasonable cause to believe that the juvenile offender committed one or more of the crimes enumerated therein, and in such event the provisions of paragraph (a) thereof shall apply.

6. (a) If the court orders removal of the action to family court, it shall state on the record the factor or factors upon which its determination is based, and the court shall give its reasons for removal in detail and not in conclusory terms.

(b) The district attorney shall state upon the record the reasons for his consent to removal of the action to the family court where such consent is required. The reasons shall be stated in detail and not in conclusory terms.

(c) For the purpose of making a determination pursuant to subdivision four or five of this section, the court may make such inquiry as it deems necessary. Any evidence which is not legally privileged may be introduced. If the defendant testifies, his testimony may not be introduced against him in any future proceeding, except to impeach his testimony at such future proceeding as inconsistent prior testimony.

(d) Where a motion for removal by the defendant pursuant to subdivision five of this section has been denied, no further motion pursuant to this section or section 722.22 of this article may be made by the juvenile offender with respect to the same offense or offenses.

(e) Except as provided by paragraph (f) of this subdivision, this section shall not be construed to limit the powers of the grand jury.

(f) Where a motion by the defendant pursuant to subdivision five of this section has been granted, there shall be no further proceedings against the juvenile offender in any local or superior criminal court including the youth part of the superior court for the offense or offenses which were the subject of the removal order.

§ 722.21 Proceedings upon felony complaint; adolescent offender.

1. When an adolescent offender is arraigned before a youth part, the provisions of this section shall apply. If the youth part is not in session, the defendant shall be brought before the most accessible magistrate designated by the appellate division of the supreme court to act as a youth part for the purpose of making a determination whether such adolescent offender shall be detained. If the defendant is ordered to be detained, he or she shall be brought before the next session of the youth part. If the defendant is not detained, he or she shall be ordered to appear at the next session of the youth part.

2. If the defendant waives a hearing upon the felony complaint, the court must order that the defendant be held for the action of the grand jury with respect to the charge or charges contained in the felony complaint.

3. If there be a hearing, then at the conclusion of the hearing, the youth part court must dispose of the felony complaint as follows:

(a) If there is reasonable cause to believe that the defendant committed a felony, the court must order that the defendant be held for the action of a grand jury; or

(b) If there is not reasonable cause to believe that the defendant committed a felony but there is reasonable cause to believe that the defendant is a "juvenile delinquent" as defined in subdivision one of section 301.2 of the family court act, the court must specify the act or acts it found reasonable cause to believe the defendant did and direct that the action be transferred to the family court in accordance with the provisions of article seven hundred twenty-five of this title, provided, however, notwithstanding any other provision of law, section 308.1 of the family court act shall apply to actions transferred pursuant to this subdivision and such actions shall not be considered removals subject to subdivision thirteen of such section 308.1; or

(c) If there is not reasonable cause to believe that the defendant committed any criminal act, the court must dismiss the felony complaint and discharge the defendant from custody if he is in custody, or if he is at liberty on bail, it must exonerate the bail.

4. Notwithstanding the provisions of subdivisions two and three of this section, where the defendant is charged with a felony, other than a class A felony defined outside article two hundred twenty of the penal law, a violent felony defined in section 70.02 of the penal law or a felony listed in paragraph one or two of subdivision forty-two of section 1.20 of this chapter, except as provided in paragraph (c) of subdivision two of section 722.23 of this article, the court shall, upon notice from the district attorney that he or she will not file a motion to prevent removal pursuant to section 722.23 of this article, order transfer of an action against an adolescent offender to the family court pursuant to the provisions of article seven hundred twenty-five of this title, provided, however, notwithstanding any other provision of law, section 308.1 of the family court act shall apply to actions transferred pursuant to this subdivision and such actions shall not be considered removals subject to subdivision thirteen of such section 308.1.

5. Notwithstanding subdivisions two and three of this section, at the request of the district attorney, the court shall order removal of an action against an adolescent offender charged with an offense listed in paragraph (a) of subdivision two of section 722.23 of this article, to the family court pursuant to the provisions of article seven hundred twenty-five of this title and upon consideration of the criteria specified in subdivision two of section 722.22 of this article, it is deter-

mined that to do so would be in the interests of justice. Where, however, the felony complaint charges the adolescent offender with murder in the second degree as defined in section 125.25 of the penal law, rape in the first degree as defined in subdivision one of section 130.35 of the penal law, criminal sexual act in the first degree as defined in subdivision one of section 130.50 of the penal law, or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20 of this chapter, a determination that such action be removed to the family court shall, in addition, be based upon a finding of one or more of the following factors: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution; or (iii) possible deficiencies in proof of the crime.

6. (a) If the court orders removal of the action to family court pursuant to subdivision five of this section, it shall state on the record the factor or factors upon which its determination is based, and the court shall give its reasons for removal in detail and not in conclusory terms.

(b) The district attorney shall state upon the record the reasons for his consent to removal of the action to the family court where such consent is required. The reasons shall be stated in detail and not in conclusory terms.

(c) For the purpose of making a determination pursuant to subdivision five the court may make such inquiry as it deems necessary. Any evidence which is not legally privileged may be introduced. If the defendant testifies, his testimony may not be introduced against him in any future proceeding, except to impeach his testimony at such future proceeding as inconsistent prior testimony.

(d) Except as provided by paragraph (e), this section shall not be construed to limit the powers of the grand jury.

(e) Where an action against a defendant has been removed to the family court pursuant to this section, there shall be no further proceedings against the adolescent offender in any local or superior criminal court including the youth part of the superior court for the offense or offenses which were the subject of the removal order.

§ 722.22 Motion to remove juvenile offender to family court.

1. After a motion by a juvenile offender, pursuant to subdivision five of section 722.20 of this article, or after arraignment of a juvenile offender upon an indictment, the court may, on motion of any party or on its own motion:

(a) except as otherwise provided by paragraph (b) of this subdivision, order removal of the action to the family court pursuant to the provisions of article seven hundred twenty-five of this title, if, after consideration of the factors set forth in subdivision two of this section, the court determines that to do so would be in the interests of justice; or

(b) with the consent of the district attorney, order removal of an action involving an indictment charging a juvenile offender with murder in the second degree as defined in section 125.25 of the penal law; rape in the first degree, as defined in subdivision one of section 130.35 of the penal law; criminal sexual act in the first degree, as defined in subdivision one of section 130.50 of the penal law; or an armed felony as defined in paragraph (a) of subdivision forty-one of section 1.20 of this chapter, to the family court pursuant to the provisions of article seven hundred twenty-five of this title if the court finds one or more

of the following factors: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution; or (iii) possible deficiencies in the proof of the crime, and, after consideration of the factors set forth in subdivision two of this section, the court determined that removal of the action to the family court would be in the interests of justice.

2. In making its determination pursuant to subdivision one of this section the court shall, to the extent applicable, examine individually and collectively, the following:

(a) the seriousness and circumstances of the offense;

(b) the extent of harm caused by the offense;

(c) the evidence of guilt, whether admissible or inadmissible at trial;

(d) the history, character and condition of the defendant;

(e) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;

(f) the impact of a removal of the case to the family court on the safety or welfare of the community;

(g) the impact of a removal of the case to the family court upon the confidence of the public in the criminal justice system;

(h) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion; and

(i) any other relevant fact indicating that a judgment of conviction in the criminal court would serve no useful purpose.

3. The procedure for bringing on a motion pursuant to subdivision one of this section, shall accord with the procedure prescribed in subdivisions one and two of section 210.45 of this chapter. After all papers of both parties have been filed and after all documentary evidence, if any, has been submitted, the court must consider the same for the purpose of determining whether the motion is determinable on the motion papers submitted and, if not, may make such inquiry as it deems necessary for the purpose of making a determination.

4. For the purpose of making a determination pursuant to this section, any evidence which is not legally privileged may be introduced. If the defendant testifies, his testimony may not be introduced against him in any future proceeding, except to impeach his testimony at such future proceeding as inconsistent prior testimony.

5. a. If the court orders removal of the action to family court, it shall state on the record the factor or factors upon which its determination is based, and, the court shall give its reasons for removal in detail and not in conclusory terms.

b. The district attorney shall state upon the record the reasons for his consent to removal of the action to the family court. The reasons shall be stated in detail and not in conclusory terms.

§ 722.23 Removal of adolescent offenders to family court.

1. (a) Following the arraignment of a defendant charged with a crime committed when he or she was sixteen, or commencing October first, two thousand nineteen, seventeen years of age, other than any class A felony except for those defined in article two hundred twenty of the penal law, a violent felony defined in section 70.02 of the penal law or a felony listed in paragraph one or two of subdivision forty-two of section 1.20 of this chapter, or an offense set forth in the vehicle and traffic law, the court shall order the removal of the action to the family court in accordance with the applicable provisions of article seven hundred twen-

ty-five of this title unless, within thirty calendar days of such arraignment, the district attorney makes a motion to prevent removal of the action pursuant to this subdivision. If the defendant fails to report to the probation department as directed, the thirty day time period shall be tolled until such time as he or she reports to the probation department.

(b) A motion to prevent removal of an action in youth part shall be made in writing and upon prompt notice to the defendant. The motion shall contain allegations of sworn fact based upon personal knowledge of the affiant, and shall indicate if the district attorney is requesting a hearing. The motion shall be noticed to be heard promptly.

(c) The defendant shall be given an opportunity to reply. The defendant shall be granted any reasonable request for a delay. Either party may request a hearing on the facts alleged in the motion to prevent removal of the action. The hearing shall be held expeditiously.

(d) The court shall deny the motion to prevent removal of the action in youth part unless the court makes a determination upon such motion by the district attorney that extraordinary circumstances exist that should prevent the transfer of the action to family court.

(e) The court shall make a determination in writing or on the record within five days of the conclusion of the hearing or submission by the defense, whichever is later. Such determination shall include findings of fact and to the extent practicable conclusions of law.

(f) For the purposes of this section, there shall be a presumption against custody and case planning services shall be made available to the defendant.

(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.

(h) Nothing in this subdivision shall preclude, and a court may order, the removal of an action to family court where all parties agree or pursuant to this chapter.

2. (a) Upon the arraignment of a defendant charged with a crime committed when he or she was sixteen or, commencing October first, two thousand nineteen, seventeen years of age on a class A felony, other than those defined in article 220 of the penal law, or a violent felony defined in section 70.02 of the penal law, the court shall schedule an appearance no later than six calendar days from such arraignment for the purpose of reviewing the accusatory instrument pursuant to this subdivision. The court shall notify the district attorney and defendant regarding the purpose of such appearance.

(b) Upon such appearance, the court shall review the accusatory instrument and any other relevant facts for the purpose of making a determination pursuant to paragraph (c) of this subdivision. Both parties may be heard and submit information relevant to the determination.

(c) The court shall order the action to proceed in accordance with subdivision one of this section unless, after reviewing the papers and hearing from the parties, the court determines in writing that the district attorney proved by a preponderance of the evidence one or more of the following as set forth in the accusatory instrument:

(i) the defendant caused significant physical injury to a person other than a participant in the offense; or

(ii) the defendant displayed a firearm, shotgun, rifle or deadly weapon as defined in the penal law in furtherance of such offense; or

(iii) the defendant unlawfully engaged in sexual intercourse, oral sexual conduct, anal sexual conduct or sexual contact as defined in section 130.00 of the penal law.

(d) Where the court makes a determination that the action shall not proceed in accordance with subdivision one of this section, such determination shall be made in writing or on the record and shall include findings of fact and to the extent practicable conclusions of law.

(e) Nothing in this subdivision shall preclude, and the court may order, the removal of an action to family court where all parties agree or pursuant to this chapter.

3. Notwithstanding the provisions of any other law, if at any time one or more charges in the accusatory instrument are reduced, such that the elements of the highest remaining charge would be removable pursuant to subdivisions one or two of this section, then the court, sua sponte or in response to a motion pursuant to subdivisions one or two of this section by the defendant, shall promptly notify the parties and direct that the matter proceed in accordance with subdivision one of this section, provided, however, that in such instance, the district attorney must file any motion to prevent removal within thirty days of effecting or receiving notice of such reduction.

4. A defendant may waive review of the accusatory instrument by the court and the opportunity for removal in accordance with this section, provided that such waiver is made by the defendant knowingly, voluntarily and in open court, in the presence of and with the approval of his or her counsel and the court. An earlier waiver shall not constitute a waiver of review and the opportunity for removal under this section.

§ 722.24 Applicability of chapter to actions and matters involving juvenile offenders or adolescent offenders.

Except where inconsistent with this article, all provisions of this chapter shall apply to all criminal actions and proceedings, and all appeals and post-judgment motions relating or attached thereto, involving a juvenile offender or adolescent offender.

§ 2. The opening paragraph and subdivisions 2 and 3 of section 725.05 of the criminal procedure law, as added by chapter 481 of the laws of 1978, are amended to read as follows:

When a [court] youth part directs that an action or charge is to be removed to the family court the [court] youth part must issue an order of removal in accordance with this section. Such order must be as follows:

2. Where the direction is authorized pursuant to paragraph (b) of subdivision three of [section 180.75] sections 722.20 or 722.21 of this [chapter] title, it must specify the act or acts it found reasonable cause to believe the defendant did.

3. Where the direction is authorized pursuant to subdivision four of [section 180.75] section 722.20 or section 722.21 of this [chapter] title, it must specify the act or acts it found reasonable cause to allege.

§ 3. Section 725.20 of the criminal procedure law, as added by chapter 481 of the laws of 1978, subdivisions 1 and 2 as amended by chapter 411 of the laws of 1979, is amended to read as follows:

§ 725.20 Record of certain actions removed.

1. The provisions of this section shall apply in any case where an order of removal to the family court is entered pursuant to a direction authorized by [subdivision four of section 180.75 or section 210.43,] article 722 of this title, or subparagraph (iii) of paragraph [(h)] (g)

of subdivision five of section 220.10 of this chapter, or section 330.25 of this chapter.

2. When such an action is removed the court that directed the removal must cause the following additional records to be filed with the clerk of the county court or in the city of New York with the clerk of the supreme court of the county wherein the action was pending and with the division of criminal justice services:

(a) A certified copy of the order of removal;

(b) [Where the direction is one authorized by subdivision four of section 180.75 of this chapter, a copy of the statement of the district attorney made pursuant to paragraph (b) of subdivision six of section 180.75 of this chapter;

(c) Where the direction is authorized by section 180.75, a copy of the portion of the minutes containing the statement by the court pursuant to paragraph (a) of subdivision six of such section 180.75;

(d)] Where the direction is one authorized by subparagraph (iii) of paragraph [(h)] (g) of subdivision five of section 220.10 or section 330.25 of this chapter, a copy of the minutes of the plea of guilty, including the minutes of the memorandum submitted by the district attorney and the court;

[(e) Where the direction is one authorized by subdivision one of section 210.43 of this chapter, a copy of that portion of the minutes containing the statement by the court pursuant to paragraph (a) of subdivision five of section 210.43;

(f) Where the direction is one authorized by paragraph (b) of subdivision one of section 210.43 of this chapter, a copy of that portion of the minutes containing the statement of the district attorney made pursuant to paragraph (b) of subdivision five of section 210.43;] and

[(g)] (c) In addition to the records specified in this subdivision, such further statement or submission of additional information pertaining to the proceeding in criminal court in accordance with standards established by the commissioner of the division of criminal justice services, subject to the provisions of subdivision three of this section.

3. It shall be the duty of said clerk to maintain a separate file for copies of orders and minutes filed pursuant to this section. Upon receipt of such orders and minutes the clerk must promptly delete such portions as would identify the defendant, but the clerk shall nevertheless maintain a separate confidential system to enable correlation of the documents so filed with identification of the defendant. After making such deletions the orders and minutes shall be placed within the file and must be available for public inspection. Information permitting correlation of any such record with the identity of any defendant shall not be divulged to any person except upon order of a justice of the supreme court based upon a finding that the public interest or the interests of justice warrant disclosure in a particular cause for a particular case or for a particular purpose or use.

§ 4. The article heading of article 100 of the criminal procedure law is amended to read as follows:

COMMENCEMENT OF ACTION IN LOCAL CRIMINAL COURT OR YOUTH PART OF A SUPERIOR COURT--[LOCAL CRIMINAL COURT] ACCUSATORY INSTRUMENTS

§ 5. The first undesignated paragraph of section 100.05 of the criminal procedure law is amended to read as follows:

A criminal action is commenced by the filing of an accusatory instrument with a criminal court, or, in the case of a juvenile offender or

adolescent offender, other than an adolescent offender charged with only a violation or traffic infraction, the youth part of the superior court, and if more than one such instrument is filed in the course of the same criminal action, such action commences when the first of such instruments is filed. The only way in which a criminal action can be commenced in a superior court, other than a criminal action against a juvenile offender or adolescent offender is by the filing therewith by a grand jury of an indictment against a defendant who has never been held by a local criminal court for the action of such grand jury with respect to any charge contained in such indictment. Otherwise, a criminal action can be commenced only in a local criminal court, by the filing therewith of a local criminal court accusatory instrument, namely:

§ 6. The section heading and subdivision 5 of section 100.10 of the criminal procedure law are amended to read as follows:

Local criminal court and youth part of the superior court accusatory instruments; definitions thereof.

5. A "felony complaint" is a verified written accusation by a person, filed with a local criminal court, or youth part of the superior court, charging one or more other persons with the commission of one or more felonies. It serves as a basis for the commencement of a criminal action, but not as a basis for prosecution thereof.

§ 7. The section heading of section 100.40 of the criminal procedure law is amended to read as follows:

Local criminal court and youth part of the superior court accusatory instruments; sufficiency on face.

§ 8. The criminal procedure law is amended by adding a new section 100.60 to read as follows:

§ 100.60 Youth part of the superior court accusatory instruments; in what courts filed.

Any youth part of the superior court accusatory instrument may be filed with the youth part of the superior court of a particular county when an offense charged therein was allegedly committed in such county or that part thereof over which such court has jurisdiction.

§ 9. The article heading of article 110 of the criminal procedure law is amended to read as follows:

REQUIRING DEFENDANT'S APPEARANCE
IN LOCAL CRIMINAL COURT OR YOUTH PART OF SUPERIOR COURT
FOR ARRAIGNMENT

§ 10. Section 110.10 of the criminal procedure law is amended to read as follows:

§ 110.10 Methods of requiring defendant's appearance in local criminal court or youth part of the superior court for arraignment; in general.

1. After a criminal action has been commenced in a local criminal court or youth part of the superior court by the filing of an accusatory instrument therewith, a defendant who has not been arraigned in the action and has not come under the control of the court may under certain circumstances be compelled or required to appear for arraignment upon such accusatory instrument by:

(a) The issuance and execution of a warrant of arrest, as provided in article one hundred twenty; or

(b) The issuance and service upon him of a summons, as provided in article one hundred thirty; or

(c) Procedures provided in articles five hundred sixty, five hundred seventy, five hundred eighty, five hundred ninety and six hundred for

securing attendance of defendants in criminal actions who are not at liberty within the state.

2. Although no criminal action against a person has been commenced in any court, he may under certain circumstances be compelled or required to appear in a local criminal court or youth part of a superior court for arraignment upon an accusatory instrument to be filed therewith at or before the time of his appearance by:

(a) An arrest made without a warrant, as provided in article one hundred forty; or

(b) The issuance and service upon him of an appearance ticket, as provided in article one hundred fifty.

§ 11. Section 110.20 of the criminal procedure law, as amended by chapter 843 of the laws of 1980, is amended to read as follows:

§ 110.20 Local criminal court or youth part of the superior court accusatory instruments; notice thereof to district attorney.

When a criminal action in which a crime is charged is commenced in a local criminal court, or youth part of the superior court other than the criminal court of the city of New York, a copy of the accusatory instrument shall be promptly transmitted to the appropriate district attorney upon or prior to the arraignment of the defendant on the accusatory instrument. If a police officer or a peace officer is the complainant or the filer of a simplified information, or has arrested the defendant or brought him before the local criminal court or youth part of the superior court on behalf of an arresting person pursuant to subdivision one of section 140.20, such officer or his agency shall transmit the copy of the accusatory instrument to the appropriate district attorney. In all other cases, the clerk of the court in which the defendant is arraigned shall so transmit it.

§ 12. The opening paragraph of subdivision 1 of section 120.20 of the criminal procedure law, as amended by chapter 506 of the laws of 2000, is amended to read as follows:

When a criminal action has been commenced in a local criminal court or youth part of the superior court by the filing therewith of an accusatory instrument, other than a simplified traffic information, against a defendant who has not been arraigned upon such accusatory instrument and has not come under the control of the court with respect thereto:

§ 13. Section 120.30 of the criminal procedure law is amended to read as follows:

§ 120.30 Warrant of arrest; by what courts issuable and in what courts returnable.

1. A warrant of arrest may be issued only by the local criminal court or youth part of the superior court with which the underlying accusatory instrument has been filed, and it may be made returnable in such issuing court only.

2. The particular local criminal court or courts or youth part of the superior court with which any particular local criminal court or youth part of the superior court accusatory instrument may be filed for the purpose of obtaining a warrant of arrest are determined, generally, by the provisions of section 100.55 or 100.60 of this title. If, however, a particular accusatory instrument may pursuant to said section 100.55 be filed with a particular town court and such town court is not available at the time such instrument is sought to be filed and a warrant obtained, such accusatory instrument may be filed with the town court of any adjoining town of the same county. If such instrument may be filed pursuant to said section 100.55 with a particular village court and such village court is not available at the time, it may be filed with the

town court of the town embracing such village, or if such town court is not available either, with the town court of any adjoining town of the same county.

§ 14. Section 120.55 of the criminal procedure law, as amended by section 71 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

§ 120.55 Warrant of arrest; defendant under parole or probation supervision.

If the defendant named within a warrant of arrest issued by a local criminal court or youth part of the superior court pursuant to the provisions of this article, or by a superior court issued pursuant to subdivision three of section 210.10 of this chapter, is under the supervision of the state department of corrections and community supervision or a local or state probation department, then a warrant for his or her arrest may be executed by a parole officer or probation officer, when authorized by his or her probation director, within his or her geographical area of employment. The execution of the warrant by a parole officer or probation officer shall be upon the same conditions and conducted in the same manner as provided for execution of a warrant by a police officer.

§ 15. Subdivision 1 of section 120.70 of the criminal procedure law is amended to read as follows:

1. A warrant of arrest issued by a district court, by the New York City criminal court, the youth part of a superior court or by a superior court judge sitting as a local criminal court may be executed anywhere in the state.

§ 16. Subdivisions 1, 6 and 7 of section 120.90 of the criminal procedure law, subdivision 1 as amended by chapter 492 of the laws of 2016, subdivisions 6 and 7 as amended by chapter 424 of the laws of 1998, are amended and a new subdivision 5-a is added to read as follows:

1. Upon arresting a defendant for any offense pursuant to a warrant of arrest in the county in which the warrant is returnable or in any adjoining county, or upon so arresting him or her for a felony in any other county, a police officer, if he or she be one to whom the warrant is addressed, must without unnecessary delay bring the defendant before the local criminal court or youth part of the superior court in which such warrant is returnable, provided that, where a local criminal court or youth part of the superior court in the county in which the warrant is returnable hereunder is operating an off-hours arraignment part designated in accordance with paragraph (w) of subdivision one of section two hundred twelve of the judiciary law at the time of defendant's return, such police officer may bring the defendant before such local criminal court or youth part of the superior court.

5-a. Whenever a police officer is required, pursuant to this section, to bring an arrested defendant before a youth part of a superior court in which a warrant of arrest is returnable, and if such court is not in session, such officer must bring such defendant before the most accessible magistrate designated by the appellate division of the supreme court in the applicable department to act as a youth part.

6. Before bringing a defendant arrested pursuant to a warrant before the local criminal court or youth part of a superior court in which such warrant is returnable, a police officer must without unnecessary delay perform all fingerprinting and other preliminary police duties required in the particular case. In any case in which the defendant is not brought by a police officer before such court but, following his arrest in another county for an offense specified in subdivision one of section

160.10, is released by a local criminal court of such other county on his own recognizance or on bail for his appearance on a specified date before the local criminal court before which the warrant is returnable, the latter court must, upon arraignment of the defendant before it, direct that he be fingerprinted by the appropriate officer or agency, and that he appear at an appropriate designated time and place for such purpose.

7. Upon arresting a juvenile offender or adolescent offender, the police officer shall immediately notify the parent or other person legally responsible for his care or the person with whom he is domiciled, that the juvenile offender or adolescent offender has been arrested, and the location of the facility where he is being detained.

§ 17. Subdivision 1 of section 130.10 of the criminal procedure law, as amended by chapter 446 of the laws of 1993, is amended to read as follows:

1. A summons is a process issued by a local criminal court directing a defendant designated in an information, a prosecutor's information, a felony complaint or a misdemeanor complaint filed with such court, or a youth part of a superior court directing a defendant designated in a felony complaint, or by a superior court directing a defendant designated in an indictment filed with such court, to appear before it at a designated future time in connection with such accusatory instrument. The sole function of a summons is to achieve a defendant's court appearance in a criminal action for the purpose of arraignment upon the accusatory instrument by which such action was commenced.

§ 18. Section 130.30 of the criminal procedure law, as amended by chapter 506 of the laws of 2000, is amended to read as follows:

§ 130.30 Summons; when issuable.

A local criminal court or youth part of the superior court may issue a summons in any case in which, pursuant to section 120.20, it is authorized to issue a warrant of arrest based upon an information, a prosecutor's information, a felony complaint or a misdemeanor complaint. If such information, prosecutor's information, felony complaint or misdemeanor complaint is not sufficient on its face as prescribed in section 100.40, and if the court is satisfied that on the basis of the available facts or evidence it would be impossible to draw and file an authorized accusatory instrument that is sufficient on its face, the court must dismiss the accusatory instrument. A superior court may issue a summons in any case in which, pursuant to section 210.10, it is authorized to issue a warrant of arrest based upon an indictment.

§ 19. Section 140.20 of the criminal procedure law is amended by adding a new subdivision 8 to read as follows:

8. If the arrest is for a juvenile offender or adolescent offender other than an arrest for a violation or a traffic infraction, such offender shall be brought before the youth part of the superior court. If the youth part is not in session, such offender shall be brought before the most accessible magistrate designated by the appellate division of the supreme court in the applicable department to act as a youth part.

§ 20. Subdivision 6 of section 140.20 of the criminal procedure law, as added by chapter 411 of the laws of 1979, is amended to read as follows:

6. Upon arresting a juvenile offender or a person sixteen or commencing October first, two thousand nineteen, seventeen years of age without a warrant, the police officer shall immediately notify the parent or other person legally responsible for his or her care or the person with

whom he or she is domiciled, that [the juvenile] such offender or person has been arrested, and the location of the facility where he or she is being detained. If the officer determines that it is necessary to question a juvenile offender or such person, the officer must take him or her to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of the juvenile or such person, to his or her residence and there question him or her for a reasonable period of time. A juvenile or such person shall not be questioned pursuant to this section unless he or she and a person required to be notified pursuant to this subdivision, if present, have been advised:

(a) of the juvenile offender's or such person's right to remain silent;

(b) that the statements made by him or her may be used in a court of law;

(c) of his or her right to have an attorney present at such questioning; and

(d) of his or her right to have an attorney provided for him or her without charge if he or she is unable to afford counsel.

In determining the suitability of questioning and determining the reasonable period of time for questioning such a juvenile offender or person, his or her age, the presence or absence of his or her parents or other persons legally responsible for his or her care and notification pursuant to this subdivision shall be included among relevant considerations.

§ 21. Subdivision 2 of section 140.27 of the criminal procedure law, as amended by chapter 843 of the laws of 1980, is amended to read as follows:

2. Upon arresting a person without a warrant, a peace officer, except as otherwise provided in subdivision three or three-a, must without unnecessary delay bring him or cause him to be brought before a local criminal court, as provided in section 100.55 and subdivision one of section 140.20, and must without unnecessary delay file or cause to be filed therewith an appropriate accusatory instrument. If the offense which is the subject of the arrest is one of those specified in subdivision one of section 160.10, the arrested person must be fingerprinted and photographed as therein provided. In order to execute the required post-arrest functions, such arresting peace officer may perform such functions himself or he may enlist the aid of a police officer for the performance thereof in the manner provided in subdivision one of section 140.20.

§ 22. Section 140.27 of the criminal procedure law is amended by adding a new subdivision 3-a to read as follows:

3-a. If the arrest is for a juvenile offender or adolescent offender other than an arrest for violations or traffic infractions, such offender shall be brought before the youth part of the superior court. If the youth part is not in session, such offender shall be brought before the most accessible magistrate designated by the appellate division of the supreme court in the applicable department to act as a youth part.

§ 23. Subdivision 5 of section 140.27 of the criminal procedure law, as added by chapter 411 of the laws of 1979, is amended to read as follows:

5. Upon arresting a juvenile offender or a person sixteen or commencing October first, two thousand nineteen, seventeen years of age without a warrant, the peace officer shall immediately notify the parent or

other person legally responsible for his or her care or the person with whom he or she is domiciled, that [the juvenile] such offender or person has been arrested, and the location of the facility where he or she is being detained. If the officer determines that it is necessary to question a juvenile offender or such person, the officer must take him or her to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of a juvenile offender or such person, to his or her residence and there question him or her for a reasonable period of time. A juvenile offender or such person shall not be questioned pursuant to this section unless the juvenile offender or such person and a person required to be notified pursuant to this subdivision, if present, have been advised:

(a) of his or her right to remain silent;

(b) that the statements made by the juvenile offender or such person may be used in a court of law;

(c) of his or her right to have an attorney present at such questioning; and

(d) of his or her right to have an attorney provided for him or her without charge if he or she is unable to afford counsel.

In determining the suitability of questioning and determining the reasonable period of time for questioning such a juvenile offender or such person, his or her age, the presence or absence of his or her parents or other persons legally responsible for his or her care and notification pursuant to this subdivision shall be included among relevant considerations.

§ 24. Subdivision 5 of section 140.40 of the criminal procedure law, as added by chapter 411 of the laws of 1979, is amended to read as follows:

5. If a police officer takes an arrested juvenile offender or a person sixteen or commencing October first, two thousand nineteen, seventeen years of age into custody, the police officer shall immediately notify the parent or other person legally responsible for his or her care or the person with whom he or she is domiciled, that [the juvenile] such offender or person has been arrested, and the location of the facility where he or she is being detained. If the officer determines that it is necessary to question a juvenile offender or such person the officer must take him or her to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of the juvenile offender or such person, to his or her residence and there question him or her for a reasonable period of time. A juvenile offender or such person shall not be questioned pursuant to this section unless he or she and a person required to be notified pursuant to this subdivision, if present, have been advised:

(a) of his or her right to remain silent;

(b) that the statements made by the juvenile offender or such person may be used in a court of law;

(c) of his or her right to have an attorney present at such questioning; and

(d) of his or her right to have an attorney provided for him or her without charge if he or she is unable to afford counsel.

In determining the suitability of questioning and determining the reasonable period of time for questioning such a juvenile offender or such person, his or her age, the presence or absence of his or her parents or other persons legally responsible for his or her care and

notification pursuant to this subdivision shall be included among relevant considerations.

§ 25. Subdivisions 2, 3, 4, 5 and 6 of section 180.75 of the criminal procedure law are REPEALED.

§ 26. Subdivision 1 of section 180.75 of the criminal procedure law, as added by chapter 481 of the laws of 1978, is amended to read as follows:

1. When a juvenile offender or adolescent offender is arraigned before [a local criminal court] the youth part of a superior court or the most accessible magistrate designated by the appellate division of the supreme court in the applicable department to act as a youth part, the provisions of [this section] article seven hundred twenty-two of this chapter shall apply in lieu of the provisions of sections 180.30, 180.50 and 180.70 of this article.

§ 27. The opening paragraph of section 180.80 of the criminal procedure law, as amended by chapter 556 of the laws of 1982, is amended to read as follows:

Upon application of a defendant against whom a felony complaint has been filed with a local criminal court or the youth part of a superior court, and who, since the time of his arrest or subsequent thereto, has been held in custody pending disposition of such felony complaint, and who has been confined in such custody for a period of more than one hundred twenty hours or, in the event that a Saturday, Sunday or legal holiday occurs during such custody, one hundred forty-four hours, without either a disposition of the felony complaint or commencement of a hearing thereon, the [local criminal] court must release him on his own recognizance unless:

§ 27-a. Section 190.80 of the criminal procedure law, the opening paragraph as amended by chapter 411 of the laws of 1979, is amended to read as follows:

§ 190.80 Grand jury; release of defendant upon failure of timely grand jury action.

Upon application of a defendant who on the basis of a felony complaint has been held by a local criminal court for the action of a grand jury, and who, at the time of such order or subsequent thereto, has been committed to the custody of the sheriff pending such grand jury action, and who has been confined in such custody for a period of more than forty-five days, or, in the case of a juvenile offender or adolescent offender, thirty days, without the occurrence of any grand jury action or disposition pursuant to subdivision one, two or three of section 190.60, the superior court by which such grand jury was or is to be impaneled must release him on his own recognizance unless:

(a) The lack of a grand jury disposition during such period of confinement was due to the defendant's request, action or condition, or occurred with his consent; or

(b) The people have shown good cause why such order of release should not be issued. Such good cause must consist of some compelling fact or circumstance which precluded grand jury action within the prescribed period or rendered the same against the interest of justice.

§ 28. Subdivision (b) of section 190.71 of the criminal procedure law, as added by chapter 481 of the laws of 1978, is amended to read as follows:

(b) A grand jury may vote to file a request to remove a charge to the family court if it finds that a person [thirteen, fourteen or fifteen] sixteen, or commencing October first, two thousand nineteen, seventeen years of age or younger did an act which, if done by a person over the

age of sixteen, or commencing October first, two thousand nineteen, seventeen, would constitute a crime provided (1) such act is one for which it may not indict; (2) it does not indict such person for a crime; and (3) the evidence before it is legally sufficient to establish that such person did such act and competent and admissible evidence before it provides reasonable cause to believe that such person did such act.

§ 29. Subdivision 6 of section 200.20 of the criminal procedure law, as added by chapter 136 of the laws of 1980, is amended to read as follows:

6. Where an indictment charges at least one offense against a defendant who was under the age of [sixteen] seventeen, or commencing October first, two thousand nineteen, eighteen at the time of the commission of the crime and who did not lack criminal responsibility for such crime by reason of infancy, the indictment may, in addition, charge in separate counts one or more other offenses for which such person would not have been criminally responsible by reason of infancy, if:

(a) the offense for which the defendant is criminally responsible and the one or more other offenses for which he or she would not have been criminally responsible by reason of infancy are based upon the same act or upon the same criminal transaction, as that term is defined in subdivision two of section 40.10 of this chapter; or

(b) the offenses are of such nature that either proof of the first offense would be material and admissible as evidence in chief upon a trial of the second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first.

§ 29-a. Subdivision 7 of section 210.30 of the criminal procedure law, as added by chapter 136 of the laws of 1980, is amended to read as follows:

7. Notwithstanding any other provision of law, where the indictment is filed against a juvenile offender or adolescent offender, the court shall dismiss the indictment or count thereof where the evidence before the grand jury was not legally sufficient to establish the offense charged or any lesser included offense for which the defendant is criminally responsible. Upon such dismissal, unless the court shall authorize the people to resubmit the charge to a subsequent grand jury, and upon a finding that there was sufficient evidence to believe defendant is a juvenile delinquent as defined in subdivision (a) of section seven hundred twelve of the family court act and upon specifying the act or acts it found sufficient evidence to believe defendant committed, the court may direct that such matter be removed to family court in accordance with the provisions of article seven hundred twenty-five of this chapter.

§ 30. Section 210.43 of the criminal procedure law is REPEALED.

§ 31. Intentionally omitted.

§ 31-a. Paragraph (a) of subdivision 1 of section 255.10 of the criminal procedure law, as amended by chapter 209 of the laws of 1990, is amended to read as follows:

(a) dismissing or reducing an indictment pursuant to article 210 or removing an action to the family court pursuant to [section 210.43] article 722; or

§ 31-b. Subdivisions 1 and 2 of section 330.25 of the criminal procedure law, subdivision 1 as added by chapter 481 of the laws of 1978 and subdivision 2 as amended by chapter 920 of the laws of 1982, are amended to read as follows:

1. Where a defendant is a juvenile offender or an adolescent offender who does not stand convicted of murder in the second degree, upon motion

and with the consent of the district attorney, the action may be removed to the family court in the interests of justice pursuant to article seven hundred twenty-five of this chapter notwithstanding the verdict.

2. If the district attorney consents to the motion for removal pursuant to this section, he shall file a subscribed memorandum with the court setting forth (1) a recommendation that the interests of justice would best be served by removal of the action to the family court; and (2) if the conviction is of an offense set forth in paragraph (b) of subdivision one of section [210.43] 722.22 of this chapter, specific factors, one or more of which reasonably support the recommendation, showing, (i) mitigating circumstances that bear directly upon the manner in which the crime was committed, or (ii) where the defendant was not the sole participant in the crime, that the defendant's participation was relatively minor although not so minor as to constitute a defense to prosecution, or (iii) where the juvenile offender has no previous adjudications of having committed a designated felony act, as defined in subdivision eight of section 301.2 of the family court act, regardless of the age of the offender at the time of commission of the act, that the criminal act was not part of a pattern of criminal behavior and, in view of the history of the offender, is not likely to be repeated.

§ 32. Subdivision 2 of section 410.40 of the criminal procedure law, as amended by chapter 652 of the laws of 2008, is amended to read as follows:

2. Warrant. (a) Where the probation officer has requested that a probation warrant be issued, the court shall, within seventy-two hours of its receipt of the request, issue or deny the warrant or take any other lawful action including issuance of a notice to appear pursuant to subdivision one of this section. If at any time during the period of a sentence of probation or of conditional discharge the court has reasonable grounds to believe that the defendant has violated a condition of the sentence, the court may issue a warrant to a police officer or to an appropriate peace officer directing him or her to take the defendant into custody and bring the defendant before the court without unnecessary delay; provided, however, if the court in which the warrant is returnable is a superior court, and such court is not available, and the warrant is addressed to a police officer or appropriate probation officer certified as a peace officer, such executing officer may unless otherwise specified under paragraph (b) of this subdivision, bring the defendant to the local correctional facility of the county in which such court sits, to be detained there until not later than the commencement of the next session of such court occurring on the next business day; or if the court in which the warrant is returnable is a local criminal court, and such court is not available, and the warrant is addressed to a police officer or appropriate probation officer certified as a peace officer, such executing officer must without unnecessary delay bring the defendant before an alternate local criminal court, as provided in subdivision five of section 120.90 of this chapter. A court which issues such a warrant may attach thereto a summary of the basis for the warrant. In any case where a defendant arrested upon the warrant is brought before a local criminal court other than the court in which the warrant is returnable, such local criminal court shall consider such summary before issuing a securing order with respect to the defendant.

(b) If the court in which the warrant is returnable is a superior court, and such court is not available, and the warrant is addressed to a police officer or appropriate probation officer certified as a peace officer, such executing officer shall, where a defendant is sixteen

years of age or younger who allegedly commits an offense or a violation of his or her probation or conditional discharge imposed for an offense on or after October first, two thousand eighteen, or where a defendant is seventeen years of age or younger who allegedly commits an offense or a violation of his or her probation or conditional discharge imposed for an offense on or after October first, two thousand nineteen, bring the defendant without unnecessary delay before the youth part, provided, however that if the youth part is not in session, the defendant shall be brought before the most accessible magistrate designated by the appellate division.

§ 33. Intentionally omitted.

§ 34. Intentionally omitted.

§ 35. The criminal procedure law is amended by adding a new section 410.90-a to read as follows:

§ 410.90-a Superior court; youth part.

Notwithstanding any other provisions of this article, all proceedings relating to a juvenile offender or adolescent offender shall be heard in the youth part of the superior court having jurisdiction and any intrastate transfers under this article shall be between courts designated as a youth part pursuant to article seven hundred twenty-two of this chapter.

§ 36. Section 510.15 of the criminal procedure law, as amended by chapter 411 of the laws of 1979, subdivision 1 as designated and subdivision 2 as added by chapter 359 of the laws of 1980, is amended to read as follows:

§ 510.15 Commitment of principal under [sixteen] seventeen or eighteen.

1. When a principal who is under the age of sixteen is committed to the custody of the sheriff the court must direct that the principal be taken to and lodged in a place certified by the [state division for youth] office of children and family services as a juvenile detention facility for the reception of children. When a principal who (a) commencing October first, two thousand eighteen, is sixteen years of age; or (b) commencing October first, two thousand nineteen, is sixteen or seventeen years of age, is committed to the custody of the sheriff, the court must direct that the principal be taken to and lodged in a place certified by the office of children and family services in conjunction with the state commission of correction as a specialized secure juvenile detention facility for older youth. Where such a direction is made the sheriff shall deliver the principal in accordance therewith and such person shall although lodged and cared for in a juvenile detention facility continue to be deemed to be in the custody of the sheriff. No principal under the age [of sixteen] specified to whom the provisions of this section may apply shall be detained in any prison, jail, lockup, or other place used for adults convicted of a crime or under arrest and charged with the commission of a crime without the approval of the [state division for youth] office of children and family services which shall consult with the commission of correction if the principal is sixteen years of age or older in the case of each principal and the statement of its reasons therefor. The sheriff shall not be liable for any acts done to or by such principal resulting from negligence in the detention of and care for such principal, when the principal is not in the actual custody of the sheriff.

2. Except upon consent of the defendant or for good cause shown, in any case in which a new securing order is issued for a principal previously committed to the custody of the sheriff pursuant to this section, such order shall further direct the sheriff to deliver the principal

from a juvenile detention facility to the person or place specified in the order.

§ 36-a. The correction law is amended by adding a new section 500-p to read as follows:

§ 500-p. Prohibition on the custody of youth in Rikers Island facilities. Notwithstanding any other provision of law, no youth under the age of eighteen shall be placed or held in Rikers Island correctional facility or any facility located on Rikers Island located in the city of New York on or after April first, two thousand eighteen, to the extent practicable, but in no event after October first, two thousand eighteen and such youth shall be taken to and lodged in places certified by the office of children and family services in conjunction with the commission of correction and operated by the New York city administration for children's services in conjunction with the New York city department of corrections as a specialized juvenile detention facility for that purpose.

§ 37. Intentionally omitted.

§ 38. Section 30.00 of the penal law, as amended by chapter 481 of the laws of 1978, subdivision 2 as amended by chapter 7 of the laws of 2007, is amended to read as follows:

§ 30.00 Infancy.

1. Except as provided in [subdivision] subdivisions two and three of this section, a person less than [sixteen] seventeen, or commencing October first, two thousand nineteen, a person less than eighteen years old is not criminally responsible for conduct.

2. A person thirteen, fourteen or, fifteen years of age is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of [the penal law] this chapter; and a person fourteen or, fifteen years of age is criminally responsible for acts constituting the crimes defined in section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; or section 265.03 of this chapter, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree, or for such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of [the penal law] this chapter.

3. A person sixteen or commencing October first, two thousand nineteen, seventeen years of age is criminally responsible for acts constituting:

(a) a felony, as defined in subdivision five of section 10.00 of this chapter;

(b) a traffic infraction, as defined in subdivision two of section 10.00 of this chapter;

(c) a violation, as defined in subdivision three of section 10.00 of this chapter;

(d) a misdemeanor as defined in subdivision four of section 10.00 of this chapter, but only when the charge for such misdemeanor is:

(i) accompanied by a felony charge that is shown to have been committed as a part of the same criminal transaction, as defined in subdivision two of section 40.10 of the criminal procedure law;

(ii) results from reduction or dismissal in satisfaction of a charge for a felony offense, in accordance with a plea of guilty pursuant to subdivision four of section 220.10 of the criminal procedure law; or

(iii) a misdemeanor defined in the vehicle and traffic law.

4. In any prosecution for an offense, lack of criminal responsibility by reason of infancy, as defined in this section, is a defense.

§ 39. Intentionally omitted.

§ 40. Intentionally omitted.

§ 40-a. Subdivision 5 of section 70.00 of the penal law, as amended by chapter 482 of the laws of 2009, is amended to read as follows:

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter and in accordance with the procedures provided by law for imposing a sentence for such crime. A defendant who was eighteen years of age or older at the time of the commission of the crime must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter. A defendant who was seventeen years of age or younger at the time of the commission of the crime may be sentenced, in accordance with law, to the applicable indeterminate sentence with a maximum term of life imprisonment. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or for the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of aggravated murder as defined in subdivision two of section 125.26 of this chapter.

§ 41. The penal law is amended by adding a new section 60.10-a to read as follows:

§ 60.10-a Authorized disposition; adolescent offender.

When an adolescent offender is convicted of an offense, the court shall sentence the defendant to any sentence authorized to be imposed on a person who committed such offense at age eighteen or older. When a sentence is imposed, the court shall consider the age of the defendant in exercising its discretion at sentencing.

§ 42. Intentionally omitted.

§ 43. Subdivision 2 of section 70.20 of the penal law, as amended by chapter 437 of the laws of 2013, is amended to read as follows:

2. [(a)] Definite sentence. Except as provided in subdivision four of this section, when a definite sentence of imprisonment is imposed, the court shall commit the defendant to the county or regional correctional institution for the term of his sentence and until released in accordance with the law.

[(b) The court in committing a defendant who is not yet eighteen years of age to the local correctional facility shall inquire as to whether the parents or legal guardian of the defendant, if present, will grant to the minor the capacity to consent to routine medical, dental and mental health services and treatment.

(c) Nothing in this subdivision shall preclude a parent or legal guardian of an inmate who is not yet eighteen years of age from making a motion on notice to the local correction facility pursuant to article twenty-two of the civil practice law and rules and section one hundred forty of the correction law, objecting to routine medical, dental or mental health services and treatment being provided to such inmate under the provisions of paragraph (b) of this subdivision.]

§ 44. Paragraph (a) of subdivision 4 of section 70.20 of the penal law, as amended by section 124 of subpart B of part C of chapter 62 of the laws of 2011, is amended and two new paragraphs (a-1) and (a-2) are added to read as follows:

(a) Notwithstanding any other provision of law to the contrary, a juvenile offender, adolescent offender, or a juvenile offender or adolescent offender who is adjudicated a youthful offender [and], who is given an indeterminate, determinate or a definite sentence, and who is under the age of twenty-one at the time of sentencing, shall be committed to the custody of the commissioner of the office of children and family services who shall arrange for the confinement of such offender in secure facilities of the office; provided, however if an adolescent offender who committed a crime on or after the youth's sixteenth birthday receives a definite sentence not exceeding one year, the judge may order that the adolescent offender serve such sentence in a specialized secure juvenile detention facility for older youth certified by the office of children and family services in conjunction with the state commission of correction and operated pursuant to section two hundred eighteen-a of the county law. The release or transfer of such juvenile offenders or adolescent offenders from the office of children and family services shall be governed by section five hundred eight of the executive law.

(a-1) Notwithstanding paragraph (a) of this subdivision, an adolescent offender, or an adolescent offender who is adjudicated a youthful offender, who is given an indeterminate or determinate sentence shall be committed to the department of corrections and community supervision and if such person is under eighteen years of age at sentencing, he or she shall be placed in an adolescent offender facility pursuant to section seventy-seven of the correction law, operated by such department.

(a-2) Notwithstanding any other provision of law to the contrary, a person sixteen years of age who commits a vehicle and traffic law offense that does not constitute an adolescent offender offense on or after October first, two thousand eighteen and a person seventeen years of age who commits such an offense on or after October first, two thousand nineteen who is sentenced to a term of imprisonment who is under the age of twenty-one at the time he or she is sentenced shall be

committed to a specialized secure detention facility for older youth certified by the office of children and family services in conjunction with the state commission of correction.

§ 44-a. Intentionally omitted.

§ 44-b. Intentionally omitted.

§ 45. Intentionally omitted.

§ 46. Intentionally omitted.

§ 47. Intentionally omitted.

§ 48. The criminal procedure law is amended by adding a new section 160.59 to read as follows:

§ 160.59 Sealing of certain convictions.

1. Definitions: As used in this section, the following terms shall have the following meanings:

(a) "Eligible offense" shall mean any crime defined in the laws of this state other than a sex offense defined in article one hundred thirty of the penal law, an offense defined in article two hundred sixty-three of the penal law, a felony offense defined in article one hundred twenty-five of the penal law, a violent felony offense defined in section 70.02 of the penal law, a class A felony offense defined in the penal law, a felony offense defined in article one hundred five of the penal law where the underlying offense is not an eligible offense, an attempt to commit an offense that is not an eligible offense if the attempt is a felony, or an offense for which registration as a sex offender is required pursuant to article six-C of the correction law. For the purposes of this section, where the defendant is convicted of more than one eligible offense, committed as part of the same criminal transaction as defined in subdivision two of section 40.10 of this chapter, those offenses shall be considered one eligible offense.

(b) "Sentencing judge" shall mean the judge who pronounced sentence upon the conviction under consideration, or if that judge is no longer sitting in a court in the jurisdiction in which the conviction was obtained, any other judge who is sitting in the criminal court where the judgment of conviction was entered.

1-a. The chief administrator of the courts shall, pursuant to section 10.40 of this chapter, prescribe a form application which may be used by a defendant to apply for sealing pursuant to this section. Such form application shall include all the essential elements required by this section to be included in an application for sealing. Nothing in this subdivision shall be read to require a defendant to use such form application to apply for sealing.

2. (a) A defendant who has been convicted of up to two eligible offenses but not more than one felony offense may apply to the court in which he or she was convicted of the most serious offense to have such conviction sealed. If all offenses are offenses with the same classification, the application shall be made to the court in which the defendant was last convicted.

(b) An application shall contain (i) a copy of a certificate of disposition or other similar documentation for any offense for which the defendant has been convicted, or an explanation of why such certificate or other documentation is not available; (ii) a sworn statement of the defendant as to whether he or she has filed, or then intends to file, any application for sealing of any other eligible offense; (iii) a copy of any other such application that has been filed; (iv) a sworn statement as to the conviction or convictions for which relief is being sought; and (v) a sworn statement of the reason or reasons why the court

should, in its discretion, grant such sealing, along with any supporting documentation.

(c) A copy of any application for such sealing shall be served upon the district attorney of the county in which the conviction, or, if more than one, the convictions, was or were obtained. The district attorney shall notify the court within forty-five days if he or she objects to the application for sealing.

(d) When such application is filed with the court, it shall be assigned to the sentencing judge unless more than one application is filed in which case the application shall be assigned to the county court or the supreme court of the county in which the criminal court is located, who shall request and receive from the division of criminal justice services a fingerprint based criminal history record of the defendant, including any sealed or suppressed records. The division of criminal justice services also shall include a criminal history report, if any, from the federal bureau of investigation regarding any criminal history information that occurred in other jurisdictions. The division is hereby authorized to receive such information from the federal bureau of investigation for this purpose, and to make such information available to the court, which may make this information available to the district attorney and the defendant.

3. The sentencing judge, or county or supreme court shall summarily deny the defendant's application when:

(a) the defendant is required to register as a sex offender pursuant to article six-C of the correction law; or

(b) the defendant has previously obtained sealing of the maximum number of convictions allowable under section 160.58 of the criminal procedure law; or

(c) the defendant has previously obtained sealing of the maximum number of convictions allowable under subdivision four of this section; or

(d) the time period specified in subdivision five of this section has not yet been satisfied; or

(e) the defendant has an undisposed arrest or charge pending; or

(f) the defendant was convicted of any crime after the date of the entry of judgement of the last conviction for which sealing is sought; or

(g) the defendant has failed to provide the court with the required sworn statement of the reasons why the court should grant the relief requested; or

(h) the defendant has been convicted of two or more felonies or more than two crimes.

4. Provided that the application is not summarily denied for the reasons set forth in subdivision three of this section, a defendant who stands convicted of up to two eligible offenses, may obtain sealing of no more than two eligible offenses but not more than one felony offense.

5. Any eligible offense may be sealed only after at least ten years have passed since the imposition of the sentence on the defendant's latest conviction or, if the defendant was sentenced to a period of incarceration, including a period of incarceration imposed in conjunction with a sentence of probation, the defendant's latest release from incarceration. In calculating the ten year period under this subdivision, any period of time the defendant spent incarcerated after the conviction for which the application for sealing is sought, shall be excluded and such ten year period shall be extended by a period or periods equal to the time served under such incarceration.

6. Upon determining that the application is not subject to mandatory denial pursuant to subdivision three of this section and that the application is opposed by the district attorney, the sentencing judge or county or supreme court shall conduct a hearing on the application in order to consider any evidence offered by either party that would aid the sentencing judge in his or her decision whether to seal the records of the defendant's convictions. No hearing is required if the district attorney does not oppose the application.

7. In considering any such application, the sentencing judge or county or supreme court shall consider any relevant factors, including but not limited to:

(a) the amount of time that has elapsed since the defendant's last conviction;

(b) the circumstances and seriousness of the offense for which the defendant is seeking relief, including whether the arrest charge was not an eligible offense;

(c) the circumstances and seriousness of any other offenses for which the defendant stands convicted;

(d) the character of the defendant, including any measures that the defendant has taken toward rehabilitation, such as participating in treatment programs, work, or schooling, and participating in community service or other volunteer programs;

(e) any statements made by the victim of the offense for which the defendant is seeking relief;

(f) the impact of sealing the defendant's record upon his or her rehabilitation and upon his or her successful and productive reentry and reintegration into society; and

(g) the impact of sealing the defendant's record on public safety and upon the public's confidence in and respect for the law.

8. When a sentencing judge or county or supreme court orders sealing pursuant to this section, all official records and papers relating to the arrests, prosecutions, and convictions, including all duplicates and copies thereof, on file with the division of criminal justice services or any court shall be sealed and not made available to any person or public or private agency except as provided for in subdivision nine of this section; provided, however, the division shall retain any fingerprints, palmprints and photographs, or digital images of the same. The clerk of such court shall immediately notify the commissioner of the division of criminal justice services regarding the records that shall be sealed pursuant to this section. The clerk also shall notify any court in which the defendant has stated, pursuant to paragraph (b) of subdivision two of this section, that he or she has filed or intends to file an application for sealing of any other eligible offense.

9. Records sealed pursuant to this section shall be made available to:

(a) the defendant or the defendant's designated agent;

(b) qualified agencies, as defined in subdivision nine of section eight hundred thirty-five of the executive law, and federal and state law enforcement agencies, when acting within the scope of their law enforcement duties; or

(c) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the person has made application for such a license; or

(d) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every

person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto; or

(e) the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 USC 921 (a) (3).

10. A conviction which is sealed pursuant to this section is included within the definition of a conviction for the purposes of any criminal proceeding in which the fact of a prior conviction would enhance a penalty or is an element of the offense charged.

11. No defendant shall be required or permitted to waive eligibility for sealing pursuant to this section as part of a plea of guilty, sentence or any agreement related to a conviction for an eligible offense and any such waiver shall be deemed void and wholly enforceable.

§ 48-a. Subdivision 16 of section 296 of the executive law, as separately amended by section 3 of part N and section 14 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.59 or 160.58 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the

criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law.

§ 49. Intentionally omitted.

§ 50. Intentionally omitted.

§ 51. Intentionally omitted.

§ 52. Intentionally omitted.

§ 53. Intentionally omitted.

§ 54. Intentionally omitted.

§ 55. Intentionally omitted.

§ 56. Subdivision 1 of section 301.2 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

1. "Juvenile delinquent" means a person over seven and less than sixteen years of age, or commencing on October first, two thousand eighteen a person over seven and less than seventeen years of age, and commencing October first, two thousand nineteen a person over seven and less than eighteen years of age, who, having committed an act that would constitute a crime, or a violation, where such violation is alleged to have occurred in the same transaction or occurrence of the alleged criminal act, if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law.

§ 56-a. Section 302.1 of the family court act is amended by adding a new subdivision 3 to read as follows:

3. Whenever a crime and a violation arise out of the same transaction or occurrence, a charge alleging both offenses shall be made returnable before the court having jurisdiction over the crime. Nothing herein provided shall be construed to prevent a court, having jurisdiction over a violation relating to a criminal act from lawfully entering an order in accordance with 345.1 of this article where such order is not based upon the count or counts of the petition alleging such criminal act.

§ 56-b. Section 352.2 of the family court act is amended by adding a new subdivision 4 to read as follows:

4. Where a youth receives a juvenile delinquency adjudication for conduct committed when the youth was age sixteen or older that would constitute a violation, the court shall have the power to enter an order of disposition in accordance with paragraphs (a) and (b) of subdivision one of this section.

§ 57. Subdivisions 8 and 9 of section 301.2 of the family court act, subdivision 8 as amended by chapter 7 of the laws of 2007 and subdivision 9 as added by chapter 920 of the laws of 1982, are amended to read as follows:

8. "Designated felony act" means an act which, if done by an adult, would be a crime: (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law committed by a person thirteen, fourteen [or], fifteen, or sixteen, or commencing October first, two thousand nineteen, seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the second degree) but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree) or 160.15 (robbery in the

first degree) of the penal law committed by a person thirteen, fourteen [or], fifteen, or sixteen, or, commencing October first, two thousand nineteen, seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen [or], fifteen, or sixteen, or commencing October first, two thousand nineteen, seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by a person fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen [or], fifteen, or sixteen or, commencing October first, two thousand nineteen, seventeen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree or any designated felony act specified in paragraph (i), (ii), or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; [or] (vi) other than a misdemeanor committed by a person at least seven but less than [sixteen] seventeen years of age, and commencing October first, two thousand nineteen, a person at least seven but less than eighteen years of age, but only where there has been two prior findings by the court that such person has committed a prior felony.

9. "Designated class A felony act" means a designated felony act [defined in paragraph (i) of subdivision eight] that would constitute a class A felony if committed by an adult.

§ 58. Intentionally omitted.

§ 59. Section 304.1 of the family court act, as added by chapter 920 of the laws of 1982, subdivision 2 as amended by chapter 419 of the laws of 1987, is amended to read as follows:

§ 304.1. Detention. 1. A facility certified by the [state division for youth] office of children and family services as a juvenile detention facility must be operated in conformity with the regulations of the [state division for youth and shall be subject to the visitation and inspection of the state board of social welfare] office of children and family services.

2. No child to whom the provisions of this article may apply shall be detained in any prison, jail, lockup, or other place used for adults convicted of crime or under arrest and charged with crime without the approval of the [state division for youth] office of children and family services in the case of each child and the statement of its reasons therefor. The [state division for youth] office of children and family services shall promulgate and publish the rules which it shall apply in determining whether approval should be granted pursuant to this subdivision.

3. The detention of a child under ten years of age in a secure detention facility shall not be directed under any of the provisions of this article.

4. A detention facility which receives a child under subdivision four of section 305.2 of this part shall immediately notify the child's parent or other person legally responsible for his or her care or, if such legally responsible person is unavailable the person with whom the child resides, that he or she has been placed in detention.

§ 60. Intentionally omitted.

§ 61. Subdivision 1 of section 305.1 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

1. A private person may take a child [under the age of sixteen] who may be subject to the provisions of this article for committing an act that would be a crime if committed by an adult into custody in cases in which [he] such private person may arrest an adult for a crime under section 140.30 of the criminal procedure law.

§ 62. Subdivision 2 of section 305.2 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

2. An officer may take a child [under the age of sixteen] who may be subject to the provisions of this article for committing an act that would be a crime if committed by an adult into custody without a warrant in cases in which [he] the officer may arrest a person for a crime under article one hundred forty of the criminal procedure law.

§ 63. Paragraph (b) of subdivision 4 of section 305.2 of the family court act, as amended by chapter 492 of the laws of 1987, is amended to read as follows:

(b) forthwith and with all reasonable speed take the child directly, and without his first being taken to the police station house, to the family court located in the county in which the act occasioning the taking into custody allegedly was committed, or, when the family court is not in session, to the most accessible magistrate, if any, designated by the appellate division of the supreme court in the applicable department to conduct a hearing under section 307.4 of this part, unless the officer determines that it is necessary to question the child, in which case he or she may take the child to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of the child, to the child's residence and there question him or her for a reasonable period of time; or

§ 64. Intentionally omitted.

§ 65. Subdivision 4 of section 307.3 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

4. If the agency for any reason does not release a child under this section, such child shall be brought before the appropriate family court, or when such family court is not in session, to the most accessible magistrate, if any, designated by the appellate division of the supreme court in the applicable department; provided, however, that if such family court is not in session and if a magistrate is not available, such youth shall be brought before such family court within seventy-two hours or the next day the court is in session, whichever is sooner. Such agency shall thereupon file an application for an order pursuant to section 307.4 of this part and shall forthwith serve a copy of the application upon the appropriate presentment agency. Nothing in this subdivision shall preclude the adjustment of suitable cases pursuant to section 308.1.

§ 66. Intentionally omitted.

§ 67. Paragraph (c) of subdivision 3 of section 311.1 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

(c) the fact that the respondent is a person [under sixteen years of] of the necessary age to be a juvenile delinquent at the time of the alleged act or acts;

§ 68. Intentionally omitted.

§ 69. Paragraphs (a) and (b) of subdivision 5 of section 322.2 of the family court act, paragraph (a) as amended by chapter 37 of the laws of 2016 and paragraph (b) as added by chapter 920 of the laws of 1982, are amended to read as follows:

(a) If the court finds that there is probable cause to believe that the respondent committed a felony, it shall order the respondent committed to the custody of the commissioner of mental health or the commissioner of the office for people with developmental disabilities for an initial period not to exceed one year from the date of such order. Such period may be extended annually upon further application to the court by the commissioner having custody or his or her designee. Such application must be made not more than sixty days prior to the expiration of such period on forms that have been prescribed by the chief administrator of the courts. At that time, the commissioner must give written notice of the application to the respondent, the counsel representing the respondent and the mental hygiene legal service if the respondent is at a residential facility. Upon receipt of such application, the court must conduct a hearing to determine the issue of capacity. If, at the conclusion of a hearing conducted pursuant to this subdivision, the court finds that the respondent is no longer incapacitated, he or she shall be returned to the family court for further proceedings pursuant to this article. If the court is satisfied that the respondent continues to be incapacitated, the court shall authorize continued custody of the respondent by the commissioner for a period not to exceed one year. Such extensions shall not continue beyond a reasonable period of time necessary to determine whether the respondent will attain the capacity to proceed to a fact finding hearing in the foreseeable future but in no event shall continue beyond the respondent's eighteenth birthday or, if the respondent was at least sixteen years of age when the act was committed, beyond the respondent's twenty-first birthday.

(b) If a respondent is in the custody of the commissioner upon the respondent's eighteenth birthday, or if the respondent was at least sixteen years of age when the act resulting in the respondent's placement was committed, beyond the respondent's twenty-first birthday, the commissioner shall notify the clerk of the court that the respondent was in his custody on such date and the court shall dismiss the petition.

§ 70. Subdivisions 1 and 5 of section 325.1 of the family court act, subdivision 1 as amended by chapter 398 of the laws of 1983, subdivision 5 as added by chapter 920 of the laws of 1982, are amended to read as follows:

1. At the initial appearance, if the respondent denies a charge contained in the petition and the court determines that [he] the respondent shall be detained for more than three days pending a fact-finding hearing, the court shall schedule a probable-cause hearing to determine the issues specified in section 325.3 of this part.

5. Where the petition consists of an order of removal pursuant to article seven hundred twenty-five of the criminal procedure law, unless the removal was pursuant to subdivision three of section 725.05 of such law and the respondent was not afforded a probable cause hearing pursu-

ant to subdivision three of section [180.75] 722.20 of such law [for a reason other than his waiver thereof pursuant to subdivision two of section 180.75 of such law], the petition shall be deemed to be based upon a determination that probable cause exists to believe the respondent is a juvenile delinquent and the respondent shall not be entitled to any further inquiry on the subject of whether probable cause exists. After the filing of any such petition the court must, however, exercise independent, de novo discretion with respect to release or detention as set forth in section 320.5 of this part.

§ 70-a. Section 350.3 of the family court act is amended by adding a new subdivision 4 to read as follows:

4. The victim has the right to make a statement with regard to any matter relevant to the question of disposition. If the victim chooses to make a statement, such individual shall notify the court at least ten days prior to the date of the dispositional hearing. The court shall notify the respondent no less than seven days prior to the dispositional hearing of the victim's intent to make a statement. The victim shall not be made aware of the final disposition of the case.

§ 70-b. Section 350.4 of the family court act is amended by adding a new subdivision 5-a to read as follows:

5-a. The victim shall be allowed to make an oral or written statement.

§ 70-c. Subdivision 4 of section 351.1 of the family court act, as amended by chapter 317 of the laws of 2004, is amended to read as follows:

4. [When it appears that such information would be relevant to the findings of the court or the order of disposition, each] Each investigation report prepared pursuant to this section shall [contain a] afford the victim the right to make a statement. Such victim impact statement [which] shall include an analysis of the victim's version of the offense, the extent of injury or economic loss and the actual out-of-pocket loss or damage to the victim, including the amount of unreimbursed medical expenses, if any, and the views of the victim relating to disposition including the amount of restitution sought by the victim, subject to availability of such information. In the case [of a homicide or] where the victim is unable to assist in the preparation of the victim impact statement, the information may be acquired from the victim's family. Nothing contained in this section shall be interpreted to require that a victim or his or her family supply information for the preparation of an investigation report or that the dispositional hearing should be delayed in order to obtain such information.

§ 71. Intentionally omitted.

§ 72. The opening paragraph of subparagraph (iii) of paragraph (a) and paragraph (d) of subdivision 4 of section 353.5 of the family court act, as amended by section 6 of subpart A of part G of chapter 57 of the laws of 2012, are amended to read as follows:

after the period set under subparagraph (ii) of this paragraph, the respondent shall be placed in a residential facility for a period of twelve months; provided, however, that if the respondent has been placed from a family court in a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law for an act committed when the respondent was under sixteen years of age, once the time frames in subparagraph (ii) of this paragraph are met:

(d) Upon the expiration of the initial period of placement, or any extension thereof, the placement may be extended in accordance with section 355.3 on a petition of any party or the office of children and

family services, or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, after a dispositional hearing, for an additional period not to exceed twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday, or, for an act that was committed when the respondent was sixteen years of age or older, the respondent's twenty-third birthday.

§ 73. Paragraph (d) of subdivision 4 of section 353.5 of the family court act, as amended by chapter 398 of the laws of 1983, is amended to read as follows:

(d) Upon the expiration of the initial period of placement, or any extension thereof, the placement may be extended in accordance with section 355.3 on a petition of any party or the [division for youth] office of children and family services after a dispositional hearing, for an additional period not to exceed twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday, or, for an act that was committed when the respondent was sixteen years of age or older, the respondent's twenty-third birthday.

§ 74. Intentionally omitted.

§ 75. Subdivision 6 of section 355.3 of the family court act, as amended by chapter 663 of the laws of 1985, is amended to read as follows:

6. Successive extensions of placement under this section may be granted, but no placement may be made or continued beyond the respondent's eighteenth birthday without the child's consent for acts committed before the respondent's sixteenth birthday and in no event past the child's twenty-first birthday except as provided for in subdivision four of section 353.5 of this part.

§ 76. Paragraph (b) of subdivision 3 of section 355.5 of the family court act, as amended by chapter 145 of the laws of 2000, is amended to read as follows:

(b) subsequent permanency hearings shall be held no later than every twelve months following the respondent's initial twelve months in placement but in no event past the respondent's twenty-first birthday; provided, however, that they shall be held in conjunction with an extension of placement hearing held pursuant to section 355.3 of this [article] part.

§ 77. Subdivision 6 of section 375.2 of the family court act, as added by chapter 926 of the laws of 1982 and as renumbered by chapter 398 of the laws of 1983, is amended to read as follows:

6. Such a motion cannot be filed until the respondent's sixteenth birthday, or, commencing October first, two thousand eighteen, the respondent's seventeenth birthday, or commencing October first, two thousand nineteen, the respondent's eighteenth birthday.

§ 78. Subdivisions 5 and 6 of section 371 of the social services law, subdivision 5 as added by chapter 690 of the laws of 1962, and subdivision 6 as amended by chapter 596 of the laws of 2000, are amended to read as follows:

5. "Juvenile delinquent" means a person [over seven and less than sixteen years of age who does any act which, if done by an adult, would constitute a crime] as defined in section 301.2 of the family court act.

6. "Person in need of supervision" means a person [less than eighteen years of age who is habitually truant or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent

or other person legally responsible for such child's care, or other lawful authority] as defined in section seven hundred twelve of the family court act.

§ 78-a. Subdivision 2 of section 40 of the correction law, as added by chapter 865 of the laws of 1975, is amended to read as follows:

2. "Local correctional facility" means any county jail, county penitentiary, county lockup, city jail, police station jail, town or village jail or lockup, court detention pen [or], hospital prison ward or specialized secure juvenile detention facility for older youth.

§ 79. Subdivisions 3 and 4 of section 502 of the executive law, subdivision 3 as amended by section 1 of subpart B of part Q of chapter 58 of the laws of 2011 and subdivision 4 as added by chapter 465 of the laws of 1992, are amended to read as follows:

3. "Detention" means the temporary care and maintenance of youth held away from their homes pursuant to article three or seven of the family court act, or held pending a hearing for alleged violation of the conditions of release from an office of children and family services facility or authorized agency, or held pending a hearing for alleged violation of the condition of parole as a juvenile offender, youthful offender or adolescent offender or held pending return to a jurisdiction other than the one in which the youth is held, or held pursuant to a securing order of a criminal court if the youth named therein as principal is charged as a juvenile offender, youthful offender or adolescent offender or held pending a hearing on an extension of placement or held pending transfer to a facility upon commitment or placement by a court. Only alleged or convicted juvenile offenders, youthful offenders or adolescent offenders who have not attained their eighteenth or, commencing October first, two thousand eighteen, their twenty-first birthday shall be subject to detention in a detention facility. Commencing October first, two thousand eighteen, a youth who on or after such date committed an offense when the youth was sixteen years of age; or commencing October first, two thousand nineteen, a youth who committed an offense on or after such date when the youth was seventeen years of age held pursuant to a securing order of a criminal court if the youth is charged as an adolescent offender or held pending a hearing for alleged violation of the condition of parole as an adolescent offender, must be held in a specialized secure juvenile detention facility for older youth certified by the state office of children and family services in conjunction with the state commission of correction.

4. For purposes of this article, the term "youth" shall [be synonymous with the term "child" and means] mean a person not less than seven years of age and not more than twenty or commencing October first, two thousand nineteen, not more than twenty-two years of age.

§ 79-a. Section 503 of the executive law is amended by adding a new subdivision 9 to read as follows:

9. Notwithstanding any other provision of law, the office of children and family services in consultation with the state commission of correction shall jointly regulate, certify, inspect and supervise specialized secure detention facilities for adolescent offenders.

§ 79-b. Paragraph (b) of subdivision 4 of section 507-a of the executive law, as amended by chapter 465 of the laws of 1992, is amended to read as follows:

(b) The [division] office of children and family services shall admit a child placed with the [division] office to a facility of the [division] office within fifteen days of the date of the order of placement with the [division] office and shall admit a juvenile offender, youthful

offender or adolescent offender committed to the [division] office to a facility of the [division] office within ten days of the date of the order of commitment to the [division] office, except as provided in section five hundred seven-b of this article.

§ 80. Paragraph (a) of subdivision 2 and subdivision 5 of section 507-a of the executive law, as amended by chapter 465 of the laws of 1992, are amended to read as follows:

(a) Consistent with other provisions of law, only those youth who have reached the age of seven but who have not reached the age of twenty-one may be placed in[, committed to or remain in] the [division's] custody of the office of children and family services. Except as provided for in paragraph (a-1) of this subdivision, no youth who has reached the age of twenty-one may remain in custody of the office of children and family services.

(a-1) (i) A youth who is committed to the office of children and family services as a juvenile offender or a juvenile offender adjudicated as a youthful offender may remain in the custody of the office during the period of his or her sentence beyond the age of twenty-one in accordance with the provisions of subdivision five of section five hundred eight of this title but in no event may such a youth remain in the custody of the office beyond his or her twenty-third birthday; and (ii) a youth found to have committed a designated class A felony act who is restrictively placed with the office under subdivision four of section 353.5 of the family court act for committing an act on or after the youth's sixteenth birthday may remain in the custody of the office of children and family services up to the age of twenty-three in accordance with his or her placement order.

(a-2) Whenever it shall appear to the satisfaction of the [division] office of children and family services that any youth placed therewith is not of proper age to be so placed or is not properly placed, or is mentally or physically incapable of being materially benefited by the program of the [division] office, the [division] office shall cause the return of such youth to the county from which placement was made.

5. Consistent with other provisions of law, in the discretion of the [director, youth] commissioner of the office of children and family services, youth placed within the office under the family court act who attain the age of eighteen while in [division] custody of the office and who are not required to remain in the placement with the office as a result of a dispositional order of the family court may reside in a non-secure facility until the age of twenty-one, provided that such youth attend a full-time vocational or educational program and are likely to benefit from such program.

§ 81. Intentionally omitted.

§ 81-a. The correction law is amended by adding a new section 77 to read as follows:

§ 77. Adolescent offender facilities. 1. (a) The state shall establish one or more facilities with enhanced security features and specially trained staff to serve the adolescent offenders sentenced to a determinate or indeterminate sentence for committing offenses on or after their sixteenth birthday who are determined to need an enhanced level of secure care which shall be managed by the department with the office of children and family services assistance, and services or programs.

(b) A council comprised of the commissioner, and the office of children and family services, the commissioner of the state commission of correction, and the commissioner of the division of criminal justice services shall be established to assess the operation of the facility.

The governor shall designate the chair of the council. The council shall have the power to perform all acts necessary to carry out its duties including making unannounced visits and inspections of the facility at any time. Notwithstanding any other provision of state law to the contrary, the council may request and the department shall submit to the council, to the extent permitted by federal law, all information in the form and manner and at such times as the council may require that is appropriate to the purposes and operation of the council. The council shall be subject to the same laws as apply to the department regarding the protection and confidentiality of the information made available to the council and shall prevent access thereto by, or the distribution thereof to, persons not authorized by law.

(c) Appropriate staff working in such facilities shall receive specialized training to address working with the types of youth placed in the facility, which shall include but not be limited to, training on tactical responses and de-escalation techniques. All staff of the facility shall be subject to random drug tests.

2. The office of children and family services shall assign an assistant commissioner to assist the department, on a permanent basis, with programs or services provided within such facilities.

3. The department, the state commission of correction and the office of children and family services shall jointly establish a placement classification protocol to be used to determine the appropriate level of care for each adolescent offender in such facility. The protocol shall include, but not necessarily be limited to, consideration of the nature of the youth's offense and the youth's history and service needs.

4. Any new facilities developed by the department in consultation with the office of children and family services to serve the youth committed as adolescent offenders as a result of raising the age of juvenile jurisdiction shall, to the extent practicable, consist of smaller, more home-like facilities located near the youths' homes and families that provide gender-responsive programming, services and treatment in small, closely supervised groups that offer extensive and on-going individual attention and encourage supportive peer relationships.

5. Adolescent offenders committed or transferred to the facility, as defined in this section for committing a crime on or after their sixteenth birthday who still have time left on their sentences of imprisonment shall be transferred to a non-adolescent offender facility in the department for confinement pursuant to this chapter after completing two years in an adolescent offender facility unless they are within four months of completing the imprisonment portion of their sentence and the department determines, in its discretion, on a case-by-case basis that the youth should be permitted to remain in such facility for the additional short period of time necessary to enable them to complete their sentence. In making such a determination, the factors the department may consider include, but are not limited to, the age of the youth, the amount of time remaining on the youth's sentence of imprisonment, the level of the youth's participation in the program, the youth's educational and vocational progress, the opportunities available to the youth through the department, and the length of any applicable post-release supervision sentence. Nothing in this subdivision shall authorize a youth to remain in such facility beyond his or her twenty-third birthday.

§ 81-b. The correction law is amended by adding a new section 78 to read as follows:

§ 78. Discharge plans. The department, in consultation with the office of children and family services, shall provide discharge plans for juvenile offenders and adolescent offenders who are released to parole or post-release supervision, which are tailored to address their individual needs. Such plans shall include services designed to promote public safety and the successful and productive reentry of such adolescents into society.

§ 82. Subdivisions 2, 3, 7, 8 and 9 of section 508 of the executive law, subdivision 2 as amended by chapter 572 of the laws of 1985, subdivision 3 as added by chapter 481 of the laws of 1978 and renumbered by chapter 465 of the laws of 1992, subdivision 7 as amended by section 97 of subpart B of part C of chapter 62 of the laws of 2011, subdivision 8 as added by chapter 560 of the laws of 1984 and subdivision 9 as amended by chapter 37 of the laws of 2016, are amended to read as follows:

2. Juvenile offenders shall be confined in such facilities until the age of twenty-one in accordance with their sentences, and shall not be released, discharged or permitted home visits except pursuant to the provisions of this section.

3. The [division] office of children and family services shall report in writing to the sentencing court and district attorney, not less than once every six months during the period of confinement, on the status, adjustment, programs and progress of the offender.

The office of children and family services may transfer an offender not less than eighteen [nor more than twenty-one] years of age to the department of corrections and community supervision if the commissioner of the office certifies to the commissioner of corrections and community supervision that there is no substantial likelihood that the youth will benefit from the programs offered by office facilities.

7. While in the custody of the office of children and family services, an offender shall be subject to the rules and regulations of the office, except that his or her parole, temporary release and discharge shall be governed by the laws applicable to inmates of state correctional facilities and his or her transfer to state hospitals in the office of mental health shall be governed by section five hundred nine of this chapter; provided, however, that an otherwise eligible offender may receive the six-month limited credit time allowance for successful participation in one or more programs developed by the office of children and family services that are comparable to the programs set forth in section eight hundred three-b of the correction law, taking into consideration the age of offenders. The commissioner of the office of children and family services shall, however, establish and operate temporary release programs at office of children and family services facilities for eligible juvenile offenders and contract with the department of corrections and community supervision for the provision of parole supervision services for temporary releasees. The rules and regulations for these programs shall not be inconsistent with the laws for temporary release applicable to inmates of state correctional facilities. For the purposes of temporary release programs for juvenile offenders only, when referred to or defined in article twenty-six of the correction law, "institution" shall mean any facility designated by the commissioner of the office of children and family services, "department" shall mean the office of children and family services, "inmate" shall mean a juvenile offender residing in an office of children and family services facility, and "commissioner" shall mean the [director] commissioner of the office of children and family services. Time spent in office of children and family services facilities and in juvenile detention facilities shall be

NEW YORK STATE RAISE THE AGE IMPLEMENTATION TASK FORCE

FINAL REPORT

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Acknowledgments

The New York State Raise the Age (RTA) Implementation Task Force would like to acknowledge the tireless efforts of the individuals, organizations and agencies that made raising the age of criminal responsibility a success.

About the Raise the Age Implementation Task Force

The Raise the Age Implementation Task Force, co-chaired by the commissioners of the New York State Division of Criminal Justice Services and the Office of Children and Family Services, was created as a component of the historic RTA legislation enacted in 2017. Task Force members were selected by Governor Andrew M. Cuomo for their expertise in social service, juvenile justice and criminal justice and includes representatives from state government and the not-for-profit sector.[1] Current membership includes:

- Anthony Annucci, Acting Commissioner, Department of Corrections and Community Supervision
- Hon. Vito C. Caruso, Deputy Chief Administrative Judge for Courts Outside New York
- David Condliffe, Executive Director, Center for Community Alternatives
- RoAnn Destito, Commissioner, Office of General Services
- Nancy Ginsburg, Esq., Director of Adolescent Intervention and Diversion Team of the Legal Aid Society
- Eric Gonzalez, District Attorney, Kings County District Attorney's Office
- Mike Green, Executive Deputy Commissioner, Division of Criminal Justice Services
- Peter Kehoe, Executive Director, New York State Sheriffs' Association
- William Leahy, Director, New York State Office of Indigent Legal Services
- Robert Maccarone, Deputy Commissioner and Director, Office of Probation and Correctional Alternatives at the Division of Criminal Justice Services
- Hon. Edwina G. Mendelson, Deputy Chief Administrative Judge for Justice Initiatives
- Jesse Olczak, Unit Chief, New York State Division of Budget
- Sheila Poole, Commissioner, New York State Office of Children and Family Services
- Naomi Post, Executive Director, Children's Defense Fund-NY
- Allen Riley, Chairman, State Commission of Correction

[1] Office of New York Governor Andrew M. Cuomo. "Governor Cuomo Announces Raise the Age Implementation Task Force." April 30, 2018. https://www.governor.ny.gov/news/governor-cuomo-announces-raise-age-implementation-task-force.

Introduction

On April 10, 2017[2], Governor Andrew M. Cuomo signed a historic piece of legislation enacted by the New York State Legislature and designed to raise the age of criminal responsibility from age 16 to 18 throughout the state. The provisions of the law were phased in over two years with the age of criminal responsibility becoming 17 on October 1, 2018, and 18 on October 1, 2019.

Under the fully enacted law:

- Cases against youth who are 16 and 17 are no longer processed in adult Criminal Court. Misdemeanor level cases are processed through Family Court under delinquency procedures, where opportunities for adjustment exist. Felony cases begin in the newly created Youth Part of the Criminal Court and are processed as adolescent offender (AO) cases under laws created specifically for this age group. The procedures for removing a case from the Youth Part to Family Court vary by arrest charge.
- Youth charged with non-violent felonies are to be transferred to Family Court unless the prosecutor files a motion within 20 days showing "extraordinary circumstances" as to why the case should remain in the Youth Part. If the prosecutor files a motion, the judge must decide within five days whether to prevent the transfer of the case to Family Court.
- Youth charged with violent felonies can be transferred to Family Court if the charges do not include the accused displaying a deadly weapon during the crime, causing significant physical injury or engaging in unlawful sexual conduct and the prosecutor does not file a motion within 30 days showing "extraordinary circumstances" as to why the case should remain in the Youth Part. If the charges include an element listed above, removal to Family Court is only possible with consent of the prosecutor. Class A felonies other than Class A drug offenses cannot be transferred.
- Cases involving Vehicle and Traffic Law offenses start in the Youth Part and cannot be transferred to Family Court.
- Youth who are 16 and 17 can no longer be held in adult jails or prisons. Youth detained pre-trial or sentenced to confinement of less than one year through the Youth Part are confined in newly created specialized secure detention facilities certified by the Office of Children and Family Services (OCFS) in conjunction with the State Commission of Correction (SCOC). Youth convicted as an AO and given a sentence of one year or longer originally served those sentences in adolescent offender facilities operated by the Department of Corrections and Community Supervision (DOCCS). Additional legislative changes in 2020 shifted care of these youth to secure juvenile facilities operated by OCFS.[3]

Appendix B of this report is a flow chart illustrating how youth are processed through the justice system under Raise the Age (RTA). As most arrests for 16- and 17-year-olds are for misdemeanor and non-violent felony offenses, enactment of RTA has made it possible for almost all cases involving 16- and 17-year-olds to be resolved in Family Court.

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[2] Office of New York Governor Andrew M. Cuomo. "Governor Cuomo Announces Passage of the FY 2018 State Budget." April 10, 2017. https://www.governor.ny.gov/news/governor-cuomo-announces-passage-fy-2018-state-budget.

[3] Localities remain able to seek permission to use temporary jail placement for adjudicated JD, juvenile offender (JO) and AO youth under limited exigent circumstances (CPL 510.15[1]; Family Court Act 304.1[2]; 9 NYCRR 180-1.16).

The Raise the Age Task Force

The Raise the Age law required the creation of a Task Force. With members appointed by the Governor, the Task Force is responsible for monitoring the state's progress in implementing and complying with the major components of the law and reporting its findings to the Governor, the Assembly Speaker and Senate President, at the completion of each of the first two years of implementation.

The first report was published in August 2019 and described the significant implementation and monitoring activities undertaken by multiple state agencies, local governments, and community agencies and organizations before the law took effect on October 1, 2018. The 2019 report also provided a preliminary analysis of the law's impact by examining data collected during the first six months of implementation. In May 2020, a supplemental report detailing the number of youth served under RTA during the full 12 months of phase one (16-year-olds) was published.

This report – the second and final statutorily required task force report – offers an early look at how full enactment of the law has altered New York State's youth justice landscape. There were 18 months of implementation data available at the time of preparation, and six of those months included data on both 16- and 17-year-olds. As a result, this report does not fully evaluate the long-term impacts of RTA. The work of the Task Force has laid a strong foundation for continued state-level monitoring of RTA-related case activity and processing outcomes, which will be routinely available on the OCFS and DCJS websites. Appendix N also provides a list of data resources and links. This report provides detailed information on how the volume and processing of 16- and 17-year-olds through the justice system have changed in the short period studied. A more comprehensive analysis of the law's impact will be possible in the future.

Section I provides an update on implementation activities and highlights additional legislative changes enacted since publication of the first Task Force report.

Section II details data from October 1, 2019, through March 31, 2020: the first six months of full RTA implementation and provides insight into the current number and nature of cases processed through the redesigned system.

Section III focuses on system processing and examines case flow and outcomes for cases from October 1, 2018, through March 31, 2020.

Appendices A and B include a glossary of terms and a case processing diagram and other appendices include comprehensive tables showing both activity and case outcomes by race/ethnicity and gender.

Executive Summary

Raise the Age has dramatically changed how New York State's justice system processes cases involving youth who are 16 and 17.

2016
577 youth sentenced to state prison
2,399 youth sentenced to local adult jails
2020
Zero youth in adult jails or prisons

Before Raise the Age, all 16- and 17-year-olds arrested were arraigned and prosecuted in adult courts. During 2016, the year before this law was enacted, more than 570 16- and 17-year-olds were sentenced to state prison following conviction for a felony, many for nonviolent offenses. Nearly 2,400 youth were sentenced to local jails that year, and on any given day in 2016, nearly 500 youth younger than 18 were detained or serving a sentence in jail. Research has shown that being held in adult facilities exposes young people to higher risks of assault and fewer opportunities for age-appropriate services.[4] In addition, many youth prosecuted in adult courts end up with a criminal conviction on their record.

Today, the picture is very different. As of June 2020, there were no youth under age 18 detained with adults or sentenced to local jails or state prisons. Far fewer youth under the age of 18 are entering the justice system and opportunities for diversion have expanded for youth younger than 18 who are arrested. When confinement is ordered, 16- and 17-year-olds are now housed in specialized youth facilities operated by OCFS.

These changes demonstrate the state's capacity to implement large-scale justice system reform. This commitment to progress must be carried forward, as work remains to be done. While RTA has created a justice system that responds in more age-appropriate ways to the behaviors and needs of older adolescents, Black and Hispanic youth continue to be disproportionally represented and differentially treated at all points in the system.

[4] Allen J. Beck, Paige M. Harrison, and Devon B. Adams, "Bureau of Justice Statistics Special Report: Prison Rape Elimination Act of 2003: Sexual Violence Reported by Correctional Authorities, 2006," US Department of Justice, August 2007; and Howard N. Snyder and Melissa Sickmund, Juvenile Offenders and Victims: 2006 National Report (Washington, DC: US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2006). See the Prison Rape Elimination Act of 2003 § 2, 42 US Code § 15601 (2006) (finding that juveniles made up 7.7 percent of all victims of sexual violence in jails and prisons, even though they made up less than 1 percent of the total detained and incarcerated population, and that youth are "more than other groups of incarcerated persons . . . at the highest risk for sexual abuse"). Richard A. Mendel, Less Hype, More Help: Reducing Juvenile Crime, What Works—and What Doesn't (Washington, DC: American Youth Policy Forum, 2000), 3; and "Building Blocks for Youth," (10 December 2014).

Recent Legislative Changes

Since publication of the Raise the Age Task Force's first report, additional laws have been enacted that further expand opportunities for diversion and shift youth away from adult confinement settings.[5] Section 1 (pages 7 – 8) describes these changes in detail. In summary:

- Changes to the Family Court Act (FCA) resulted in significant changes to probation departments' juvenile delinquency practices. Amendments provide expanded opportunities for youth diversion from formal Family Court proceedings. Probation departments now have more opportunities to offer adjustment services and divert youth out of the juvenile justice system.
- Changes to state Correction Law modified the confinement settings allowable for youth sentenced as AOs in the Youth Part. Originally, AOs younger than 18 at sentencing and given a sentence of one year or longer were to be placed in adolescent offender facilities run by DOCCS. Now, all AO youth sentenced after June 2020 to a year or more serve this time in secure facilities operated by OCFS. In addition, all youth younger than18 who were in DOCCS custody when this change took effect were transferred to OCFS custody.

Key Data Findings

Long-Term Trends

Prior to RTA, the number of 16- and 17-year-olds, and youth 15 and younger in the system, had steadily declined over the past 10 years and continued to decline during the initial implementation period. This enabled the state to successfully handle the addition of 16- and 17-year-olds into the juvenile justice system.

- Felony arrests of 16- and 17-year-olds declined by 53 percent since 2010: from more than 11,500 arrests that year to fewer than 6,000 in 2019. Misdemeanors arrests also dropped dramatically from nearly 35,000 arrests to fewer than 15,000 (pages 8 – 9).
- Involvement of youth who were 15 and younger in delinquency proceedings also dropped substantially prior to RTA implementation. While the addition of 16- and 17-year-olds increased the number of youth receiving probation intake services and the number of delinquency petitions being filed, those numbers are still significantly below the volumes seen 10 years ago, when the juvenile justice system included only those 15 and younger (pages 9 – 10).
- The reductions in juvenile detention and placement since 2010 have been nothing short of astonishing, with volumes decreasing by more than 50 percent. With the addition of older youth, these detention and placement volumes saw only very modest increases (pages 9 – 10).

2019 VS. 2010		
FELONY ARRESTS	JD DETENTION ADMISSIONS	JD FAMILY COURT PLACEMENTS
↓ 53%	↓ 64%	↓ 52%

[5] For background regarding the passage and initial implementation of the Raise the Age legislation and a description of what the legislation entails, please refer to last year's report (found here).

System Processing and Early Outcomes (October 1, 2018 – March 31, 2020)
Section III of the report analyzes how cases have moved through the new system in the 18 months since RTA implementation. Outcomes are examined for various processing points in the Youth Part and Family Court. Much of the data collected for Raise the Age comes from separate and distinct parts of the youth justice system: Youth Part criminal case processing, juvenile probation intake, Family Court, and detention and placement facilities. Taken together, these data provide a comprehensive picture of the law's impact. Key findings:

Youth Part Case Processing

- Youth Parts release adolescent offenders at arraignment at high rates, enabling youth to avoid pretrial detention: 73 percent of youth were released following a felony arraignment and 62 percent of them released on their own recognizance (pages 21 – 22). There were, however, significant differences between the state's two regions. In New York City, 16- and 17-year-olds were more likely to be released at arraignment (79%) than in Rest of State (63%). In both regions, cases where youth were not released at arraignment were more likely to be instances where bail was set and not posted than a decision by the judge to remand youth to detention.
- Youth Parts remove the majority of cases to juvenile probation intake and Family Court, where they are treated as juvenile delinquents with opportunities for diversion. More than eight out of 10 (82%) cases were removed, including more than three-quarters involving charges classified as violent. While rates of removal were similar throughout the state, youth waited longer for those decisions outside of New York City: 54 percent of cases were removed within seven days from arraignment in the Rest of State. In the five boroughs, 81 percent of cases were removed within seven days. Of the 3,641 felony arrests of 16- and 17-year-olds, only 6 percent (220 cases) were fully processed within Youth Part, without being removed or declined by the prosecution (pages 24 – 25).
- The average length of stay for 16- and 17-year-olds released from a specialized secure detention facility was slightly more than one month statewide (31 days). The average length of stay in New York City was 30 days and the Rest of State, 32 days (page 28).
- Of the 88 cases that resulted in a felony conviction or adjudication as a youthful offender, 28 involved a sentence to be served at a DOCCS facility. Eight of these cases involved youth from New York City and 20 involved youth from the Rest of State (page 23).

Delinquency Case Processing

- Under RTA, 16- and 17-year-olds whose cases begin as delinquency matters or are removed from Youth Part have the possibility of their cases being adjusted (diverted) by juvenile probation. Many of these 16- and 17-year-olds were adjusted out of the system prior to having a delinquency petition filed in Family Court, including many youth facing felony charges whose cases were referred to probation intake upon removal from Youth Part. Probation departments in the Rest of State reported that 45 percent of probation intakes were adjusted, compared to 22 percent of intakes that were adjusted by the New York City Probation Department. (pages 25 – 26).
- The data suggests that the New York City Law Department declines to proceed on the majority of cases referred to Family Court from the New York City Department of Probation. At the same time, nearly all cases referred from probation departments in the rest of the state proceed to petition. This explains in part why there are so few petitions filed in New York City compared to the number of intakes referred by the New York City probation department.

- During the first 18 months of RTA implementation, 1,908 petitions filed against 16- and 17-year-olds were disposed in Family Court.
- Of the 553 cases disposed in New York City, 54 percent of felony offenses and 19 percent of misdemeanor offenses resulted in a finding of delinquency against the youth. Very few youth (57 cases or 10%) were placed in a residential facility following a finding of delinquency (pages 26 – 27). Of the 1,355 cases disposed in Family Court in the Rest of State, 47 percent of felony offenses and 35 percent of misdemeanor offenses resulted in a finding of delinquency. Of those, 182 (13%) included placement orders. In 11 percent of cases, a misdemeanor charge resulted in a youth being placed in a residential facility, compared to only 3 percent in New York City (pages 26 – 27).
- The average length of stay for youth detained on a delinquency matter was shorter than stays for youth detained through the Youth Part. The average length of stay for delinquency matters across all types of juvenile detention facilities (secure and non-secure) was seven days in New York City and 16 days in the Rest of State (pages 28 – 29).
- Only 29 youth placed outside of the home as a result of a delinquency finding were discharged from care. Among those discharged, the average length of time spent in a juvenile facility was approximately eight months (pages 28 – 29).

Racial and Ethnic Disparity

Raise the Age has changed how youth move through the justice system and created more opportunities for 16- and 17-year-olds to receive and benefit from age-appropriate services, but more work remains to be done. Similar to other states' justice systems, New York's continues to be marked by racial/ethnic disparities from point of entry to case resolution. Black youth comprise a substantially larger proportion of arrests and probation intakes than their proportion of the general population, and the state's confinement settings are predominately filled with Black and Hispanic youth (Appendix Tables C, D-2, F-2, H-2, H-4, I-2). These disparities exist in both New York City and the Rest of State and are evident within both the Youth Part and delinquency proceedings.

- In New York City, nearly all youth prosecuted as adults in the Youth Part were Black and Hispanic. More than 90 percent of admissions to specialized secure detention involved Black and Hispanic youth, and all adolescent offenders sentenced in New York City to incarceration in a DOCCS adolescent offender facility were Black (Appendix Tables H-2, K-1 & K-3).
- In the Rest of State, nearly three-quarters of youth prosecuted as adults in the Youth Part were Black or Hispanic. Eighty-four percent of specialized secure detention admissions involved Black or Hispanic youth and 65 percent of 16- and 17-year-olds sentenced to DOCCS adolescent offender facilities were Black (Appendix Tables H-2, K-1 & K-3).
- In New York City, white youth with delinquency cases were much more likely than Black or Hispanic youth to be adjusted by the probation department, regardless of whether the youth was charged with a misdemeanor or felony offense. The same was true in the Rest of State (Appendix Table L-1).
- Black and Hispanic youth were similarly over-represented in all types of youth confinement settings. In New York City, more than 90 percent of admissions to juvenile detention and placements into residential treatment facilities involved Black and Hispanic youth. In the Rest of State, the proportion of Black and Hispanic youth confined was consistently higher than white youth. Disparities were most pronounced at the point of detention, with 69 percent of juvenile detention admissions involving

Black and Hispanic youth, compared to 53 percent of residential placements (Appendix Tables H-2, H-4, and I-2).

Moving Forward

Over the past three years, New York has made great strides in improving its youth justice system, maintaining more youth in the community and expanding age-appropriate services and interventions to better meet the needs of youth, but racial and ethnic disparities persist and increase as youth move through the justice system. New York State remains committed to confronting this disparity and working to reduce the disproportionate impact of the system on Black and Hispanic youth. Several strategies to address the persistent disparities are under consideration, and localities have access to data to help them identity system points that offer opportunities for specific intervention such as improved alternatives to detention or placement. Appendix N includes links to this data.

Section I – Recent Legislative Changes

Over the past year, new laws have resulted in key changes to the youth justice system.[6]

Changes to the Family Court Act

Revisions to the Family Court Act that took effect on December 12, 2019 resulted in significant changes to probation departments' juvenile delinquency intake and adjustment services, probation practice, and the implementation of the Raise the Age Law in New York State. These amendments apply to all juvenile delinquent youth, including 16- and 17-year-olds who are arrested for felony offenses and whose cases are removed from the Youth Part to probation intake.

One significant amendment expanded the authority of probation in determining the suitability of youth eligible for adjustment services. With the exception of certain designated felonies, probation officers now have the discretion, after considering the views of the victim or complainant and the impact of the offense on the community, to proceed with adjustment services. Before this change, the consent of the victim or complainant was necessary for probation to consider adjustment as an option. This change allows additional youth to benefit from adjustment and avoid formal Family Court proceedings. A definition of adjustment and a graphic showing its role within the juvenile justice system appears in Appendices A and B.

A second change extended the maximum period of initial adjustment services from 60 to 90 days, providing additional time for youth to participate in services. An additional, two-month extension can still be granted by the Family Court following this initial adjustment period. The new law affords probation officers additional time to address the needs of youth before considering the request for extension from the Family Court.

The amendments also provide new opportunities for Family Court to refer a juvenile delinquency matter back to probation intake/adjustment services if the youth could benefit from community-based services in lieu of formal proceedings. The Family Court may do so at any time during the pendency of the case. Previously, it was only allowable at the initial appearance for the juvenile delinquency petition.

[6] For background regarding the passage and initial implementation of the Raise the Age legislation and a description of what the legislation entails, please refer to last year's report (found here).

These changes give probation officers more opportunities to divert youth from formal proceedings and connect them with critical services in the community.

Changes to Correction Law
The Fiscal Year 2020-21 enacted budget required DOCCS and OCFS, on or before July 1, 2020, to establish a transition plan and protocol to transfer custody of all adolescent offenders and youth younger than 18 from DOCCS facilities to OCFS secure juvenile facilities, on or before October 1, 2020.

In addition, as of June 2, 2020, any adolescent offenders sentenced to a determinate or indeterminate period of confinement before their 21st birthday will be housed at an OCFS secure juvenile facility instead of a DOCCS facility.

These changes are designed to connect 16- and 17-year-olds to age-appropriate residential care settings, counseling, education, programming and vocational opportunities. The goal of this transition is to foster opportunities and perspectives for youth that prepare them to have a successful and supported transition into adulthood, and to their communities upon release.

Section II – Raise the Age Six-Month Activity from October 2019 – March 2020

This section provides a brief overview of the state's youth justice trends and youth arrest, court, probation, and confinement data for the first six months of full RTA implementation:

- *Adolescent Offender Felony Arrest* and *Youth Part Arraignment Activity* provides data on 16- and 17-year-olds arrested for felonies and arraigned in the Youth Part of Criminal Court.
- *16- and 17-Year-Old Juvenile Delinquent Probation Intake Activity* provides data on the number of juvenile delinquent intakes opened for these youth by local probation departments throughout the state.
- *16- and 17-Year-Old Juvenile Delinquent Family Court Petition Filing Activity* provides information on youth who have been arrested and processed as juveniles including petitions and dispositions.
- *Youth Part Confinement Data* provides admission and point-in-time population data on the pre-trial detention and post-conviction incarceration of adolescent offenders in confinement settings created under RTA: OCFS specialized secure detention facilities and DOCCS adolescent offender facilities.
- *Family Court Confinement Data* provides admission and point-in-time population data for 16- and 17-year-olds temporarily confined to a locally run detention facility during the pendency of their delinquency case and/or placed outside of the home as a result of a delinquency finding.

Youth Justice Trends from 2010 – 2019

In the years prior to implementation of the RTA law, the number of youth who were 7 through 17 and involved in the juvenile and adult justice systems declined dramatically. These significant reductions made it easier for the juvenile justice system, including probation and Family Court, to accommodate the additional workload associated with 16- and 17-year-olds entering the system under the RTA law.

From 2010 to 2019, felony arrests of 16- and 17-year-olds declined by 53 percent. Similarly, from 2010 to 2017, misdemeanor arrests for this age group declined by 58 percent. Prior to RTA, these

youth were charged as adults, regardless of their alleged offense. Table 2.1 shows felony and misdemeanor arrests since 2010 for the 16- and 17-year old population.

Table 2.1

New York State

Arrests Among 16- and 17-Year-Old Population

Arrest Year	Felony		Misdemeanor		Total
	16	17	16	17	16 & 17
2010	5,314	6,259	15,686	19,294	46,553
2011	4,838	5,746	14,613	17,634	42,831
2012	4,411	5,171	12,921	15,912	38,415
2013	3,952	4,581	11,068	13,488	33,089
2014	3,618	4,230	9,765	12,319	29,932
2015	3,431	3,988	8,815	10,618	26,852
2016	3,253	4,007	7,562	9,645	24,467
2017	2,929	3,797	6,385	8,230	21,341
2018	2,606	3,170			
2019	2,336	3,099			

Note: Annual misdemeanor arrest counts are not available for 2018 and 2019 as these no longer require fingerprints to be taken and transmitted to the Division of Criminal Justice Services (DCJS) due to RTA Legislation.

Coinciding with the significant decline in arrests of 16- and 17-year-olds, and before the implementation of Raise the Age, other processing points in the juvenile justice system also experienced dramatic reductions. This included fewer youth 15 and younger placed in detention during their Family Court proceedings, fewer youth reviewed by probation departments for possible intake and adjustment, and fewer youth prosecuted as juvenile delinquents in Family Court and subjected to placement.

Since 2010 and prior to RTA implementation:

- Juvenile detention admissions declined 56 percent. Since 2017, detention admissions have declined an additional 18 percent despite the addition of 16-year-olds into the system. Detention admissions, however, are beginning to trend upward with the addition of 17-year-olds.
- The number of juvenile probation intake cases opened declined 58 percent. Since 2017, the addition of 16- and 17-year-olds has increased the number of intake cases from 9,616 to 13,181. While this represents a 37 percent increase, the number of cases is similar to the volume seen in 2014. More youth who would have had no access to adjustment in the adult system now have the opportunity for diversion under the law.
- Juvenile delinquency petitions filed in Family Court declined 59 percent. Since 2017, the addition of 16- and 17-year-olds has increased the number of petitions filed from 4,692 to 5,665. This represents a level of activity similar to that seen in 2016. Significant numbers of adolescents now have their cases begin in, or transferred to, the Family Court, where cases are confidential, diversion is available, and young people do not face the prospect of a permanent criminal conviction.

- Juvenile delinquent Family Court placements declined 53 percent. Overall, there has still been a 52 percent decline in placements, even with the addition of 16- and 17-year-olds.

Table 2.2
New York State Juvenile Delinquency (JD) Indicators

Year	JD Detention Admissions	JD Probation Intake Cases Opened*	JD Family Court Petitions	JD Family Court Placements
2010	7,875	22,760	11,317	1,253
2011	7,207	20,943	9,608	1,106
2012	6,075	18,278	8,992	1,156
2013	5,240	15,044	7,695	977
2014	4,677	12,683	6,598	882
2015	4,481	11,791	6,012	752
2016	3,901	10,363	5,364	698
2017	3,452	9,616	4,692	593
2018**	2,801	8,509	3,866	440
2019**	2,847	13,181	5,665	607

*Source of Intake data changed in 2019 from Probation Workload System to Caseload Explorer.
** Figures for 2018 and 2019 reflect the phase-in of 16-year-old youth starting October 1, 2018 and 17-year-old youth starting October 1, 2019.
Sources: DCJS, OCFS, OCA, and New York City Administration for Children's Services.

Part 1: Adolescent Offender Felony Arrest and Youth Part Arraignment Activity October 1, 2019 – March 31, 2020

Full implementation of Raise the Age took effect on October 1, 2019, resulting in all 16- and 17-year-olds arrested for felony offenses (adolescent offenders) being arraigned in the Youth Part of Supreme and County Criminal Court created under the law.

The data in this section detail adolescent offender arrest and arraignment activity occurring between October 1, 2019 and March 31, 2020, the first six months of RTA implementation.[7]

Adolescent Offender Felony Arrests

There were 2,228 arrests reported by law enforcement agencies. Table 2.3 shows arrests by age for New York City, Rest of State and New York State. Approximately 67 percent of arrests statewide occurred in New York City.

[7] The source of these data is the New York State Computerized Criminal History system as of April 17, 2020. For all tables within this report, percentages are rounded to the nearest whole number and may not always add to 100%.

Arrests by race/ethnicity and sex can be found in Appendix D.[8]

Table 2.3
AO Arrests by Region

		Oct – Dec 2019	Jan – Mar 2020	Total
NYC	16	389	346	735
	17	341	424	765
	Total	730	770	1,500
ROS	16	190	176	366
	17	179	183	362
	Total	369	359	728
NYS	16	579	522	1,101
	17	520	607	1,127
	Total	1,099	1,129	2,228

Arraignments

After arrest, the district attorney's office can either decline to proceed with the charges or can proceed to arraignment. There were 1,778 adolescent offender arraignments statewide. Table 2.4 presents these arraignments by age for New York City, Rest of State and New York State (see Appendix E for volumes by county). Arraignment volumes include those that took place within Youth Part as well as those occurring before local magistrates.

Table 2.4
AO Arraignments by Region

		Oct – Dec 2019	Jan – Mar 2020	Total
NYC	16	306	255	561
	17	253	311	564
	Total	559	566	1,125
ROS	16	177	151	328
	17	153	172	325
	Total	330	323	653
NYS	16	483	406	889
	17	406	483	889
	Total	889	889	1,778

Table 2.5 presents adolescent offender arraignments handled by an accessible magistrate compared to those who appeared before a designated Youth Part judge. Accessible magistrates are judges designated by the Appellate Division within each Judicial Department and, like Youth Part judges, receive specialized training in adolescent development. Accessible magistrates act in the place of Youth Part judges for certain first appearances involving adolescent offenders and

[8] Tables presenting case counts have been prepared by gender, race, and county. These tables are presented in the Appendix. Reference to specific Appendix tables are noted throughout the report.

juvenile offenders (the term "juvenile offender" is defined in Appendix A). Accessible magistrates can make decisions about detention and remove cases from the Youth Part to Family Court when prosecutors consent.[9] Accessible magistrates handle arraignments instead of the Youth Part judges when designated Youth Part judges are unavailable (evenings, weekends and holidays).

Table 2.5 shows that cases in New York City were more likely to be arraigned by an accessible magistrate (66%) than those in the Rest of State (27%).

Table 2.5
AO Arraignments in Youth Part or by an Accessible Magistrate
October 2019 - March 2020

	NYC		ROS		NYS	
	#	%	#	%	#	%
Total Arraignments	**1,125**	**100%**	**653**	**100%**	**1,778**	**100%**
Arraigned by Accessible Magistrate	748	66%	178	27%	926	52%
Arraigned in Youth Part	369	33%	436	67%	805	45%
Not Reported	8	1%	39	6%	47	3%

Part 2: 16- & 17-Year-Old Juvenile Delinquent Probation Intake Activity October 1, 2019 – March 31, 2020

Felony cases removed from the Youth Part and misdemeanor cases involving 16- and 17-year-olds (as of October 1, 2019),[10] are processed in the juvenile justice system where juvenile delinquency law applies. In Family Court, cases are confidential, and youth do not face the prospect of a permanent criminal record. While some of these cases are sent directly to Family Court where a petition could be filed and a formal case may proceed, the majority begin with probation intake, where they are reviewed for possible adjustment (also known as diversion) and participation in services. The information in this section presents the number of probation intakes opened throughout the state.[11]

An important goal of Raise the Age was to provide more youth with the opportunity to be diverted from the youth justice system and have their case adjusted as part of the Family Court process. There were 3,690 probation intakes opened for youth who were either 16 or 17 at the time of their alleged offense. Table 2.6 shows the total number of intakes opened by probation departments in New York City, the Rest of State, and New York State. Approximately 54 percent of probation intakes statewide occurred in New York City.

Probation intakes opened by county, race/ethnicity and sex can be found in Appendix F.

[9] *See* New York State Criminal Procedure Law § 722.10, 722.21, 140.20, 140.27, and 410.40; FCA § 307.3(4).
[10] Except vehicle and traffic law offenses. Please see *Introduction* for key provisions of the law.
[11] The source of these data is the Caseload Explorer Database as of April 14, 2020.

Table 2.6

Probation Intake Age 16 and 17 Intakes Opened by Region

		Oct – Dec 2019	Jan – Mar 2020	Total
NYC	16	558	428	986
	17	494	508	1,002
	Total	1,052	936	1,988
ROS	16	478	456	934
	17	390	378	768
	Total	868	834	1,702
NYS	16	1,036	884	1,920
	17	884	886	1,770
	Total	1,920	1,770	3,690

Table 2.7 below displays the number of probation intakes opened by offense class and region. Statewide, there were 1,475 felony intakes and 2,176 misdemeanor intakes opened. In New York City, 55 percent of all intakes involved felonies, while in Rest of State, felonies were 23 percent of all intakes.

Table 2.7

Probation Intake Age 16 and 17 Intakes Opened by Offense Class and Region

		October 2019 – March 2020		
		Felony	Misdemeanor	Total
NYC	16	586	396	982
	17	509	486	995
	Total	1,095	882	1,977
ROS	16	213	705	918
	17	167	589	756
	Total	380	1,294	1,674
NYS	16	799	1,101	1,900
	17	676	1,075	1,751
	Total	1,475	2,176	3,651

Note: There are 39 Intakes with an unknown offense class that are not included in this table.

Part 3: 16- & 17-Year-Old Juvenile Delinquent Family Court Petition Filing Activity October 1, 2019 – March 31, 2020

Juvenile delinquency cases that are not successfully adjusted by probation departments are reviewed by either the county presentment agency or the New York City Law Department. These agencies then file juvenile delinquency petitions in Family Court. In the Rest of State, it appears that nearly all of these cases that are referred by probation departments to county presentment agencies proceed to petition. In contrast, only about one-third of cases referred to the New York City Law Department appear to be referred to petition. The New York City Law Department declines to proceed on the majority of cases, and these cases are then diverted from further action. The information in this section is limited to only those cases that proceed to petition for Family Court processing.[12]

There were 1,325 juvenile delinquency petitions filed in Family Court for youth who were 16 or 17 years old at the time of their alleged offense. Table 2.8 and Table 2.9 show the total number of these petitions filed in New York City, the Rest of State, and New York State.

Petitions filed by county, race/ethnicity and sex can be found in Appendix G.

Table 2.8
Family Court Age 16 and 17 JD Petitions Filed by Region

		Oct – Dec 2019	Jan – Mar 2020	Total
NYC	16	137	96	233
	17	51	110	161
	Total	188	206	394
ROS	16	289	306	595
	17	122	214	336
	Total	411	520	931
NYS	16	426	402	828
	17	173	324	497
	Total	599	726	1,325

During this period, Rest of State accounted for 931 of the petitions, and 394 were filed in New York City. Statewide, there were 685 felony petitions and 640 misdemeanor petitions filed. These data show that most petitions filed against 16- and 17-year-olds were filed in ROS (70%). This is expected, given the large number of cases diverted by the New York City Law Department.

[12] The source of these data is the Office of Court Administration Family Court Database as of April 15, 2020. Data on cases that are referred to the NYC Law Department and do not proceed to petition is not collected.

Table 2.9
Family Court Age 16 and 17 JD Petitions Filed
by Offense Class and Region

		October 2019 – March 2020		
		Felony	**Misdemeanor**	**Total**
NYC	16	156	77	233
	17	99	62	161
	Total	255	139	394
ROS	16	268	327	595
	17	162	174	336
	Total	430	501	931
NYS	16	424	404	828
	17	261	236	497
	Total	685	640	1,325

Part 4: Youth Part Confinement Data

Adolescent offenders whose cases are processed in the Youth Part of Supreme and County Criminal Court can be held in specialized secure detention (SSD) facilities (for pre-trial detention and post-conviction incarceration) and DOCCS facilities (for post-conviction incarceration).[13] The data in this section presents the volume of youth held in each of these facility types during the first six months of full RTA implementation. [14]

There were 382 adolescent offender admissions to SSD facilities, with most of those admissions (98%) occurring pre-conviction, during the pendency of the case in the Youth Part. Only seven SSD admissions occurred as the result of a sentence of incarceration. Table 2.10 shows these admissions by quarter for New York City, Rest of State, and New York State. New York City admission numbers do not include youth admitted to Horizon Specialized Juvenile Detention Center, the SSD facility designated to serve youth younger than 18 who could no longer be held in New York City Department of Correction facilities at Rikers Island as of October 1, 2020, under the RTA law. Rest of State accounted for a larger proportion of the total SSD admissions (59%) than New York City (41%).

Admissions by county and sex, race/ethnicity, and top charge can be found in Appendix H.

[13] During the period included within this report, legislative actions removing AO youth from DOCCS facilities had not yet been enacted. As such, all youth under age 18 sentenced to incarceration of one year or longer were admitted to DOCCS facilities.

[14] The source of these data is OCFS, Juvenile Detention Automated System (2019 data as of 3/9/2020, 2020 data as of 4/26/2020) and DOCCS, Population Management System (data as of 4/4/2020).[15] As of June 2, 2020, AOs sentenced in the Youth Part no longer serve their sentence in DOCCS facilities and will instead serve their sentence in OCFS secure juvenile facilities.

Table 2.10
AO Specialized Secure Detention Admissions by Region

		Oct – Dec 2019	Jan – Mar 2020	Total
NYC	16	43	20	63
	17	50	45	95
	Total	93	65	158
ROS	16	46	38	84
	17	83	57	140
	Total	129	95	224
NYS	16	89	58	147
	17	133	102	235
	Total	222	160	382

Note: Figures include pre- and post-sentence youth.

Table 2.11 shows the number of unique adolescent offenders confined in these facilities on the last day of each quarter for New York City, the Rest of State and New York State. This population remained relatively stable at the end of both quarters.

Table 2.11
AO Youth in Specialized Secure Detention
on Last Day of Quarter by Region

	12/31/2019		3/31/2020	
	#	%	#	%
NYC	43	48%	41	46%
ROS	46	52%	49	54%
NYS	89	100%	90	100%

Note: Figures include pre- and post-sentence youth.

There were 10 AO youth sentenced to incarceration and committed to a DOCCS AO facility: six from October to December 2019, and four from January to March 2020.[15] Seven were sentenced in a court from a county outside of New York City while three originated from a New York City court, the first admissions from the five boroughs since implementation started.

[15] As of June 2, 2020, AOs sentenced in the Youth Part no longer serve their sentence in DOCCS facilities and will instead serve their sentence in OCFS secure juvenile facilities.

Table 2.12
AO Admissions to DOCCS by Region of Commitment

		Oct – Dec 2019	Jan – Mar 2020	Total
NYC	16	0	3	3
	17	0	0	0
	Total	0	3	3
ROS	16	6	1	7
	17	0	0	0
	Total	6	1	7
NYS	16	6	4	10
	17	0	0	0
	Total	6	4	10

Table 2.13 shows the number of unique AO youth under DOCCS custody on the last day of each quarter for New York City, the Rest of State and New York State. The population remained fairly stable.

Table 2.13
AO Youth Under DOCCS Custody by Region of Commitment on Last Day of Quarter

	12/31/2019		3/31/2020	
	#	%	#	%
NYC	0	0%	3	15%
ROS	17	100%	17	85%
NYS	17	100%	20	100%

Part 5: Family Court Confinement Data

Sixteen- and 17-year-olds whose cases are processed as juvenile delinquents (JD) in Family Court can be held in secure and non-secure detention facilities (for pre-disposition confinement, violations of probation, and warrants) and OCFS facilities and voluntary agencies (for post-disposition placement). The data in this section presents the volume of JD youth held in detention and residential placement settings during the first six months of full RTA implementation.[16] This includes 16- and 17-year-olds charged with misdemeanors whose cases went directly to Family Court and 16- and 17-year-olds whose cases were transferred to Family Court from the Youth Part of Supreme and County Criminal Court. Detention and placement are defined in Appendix A.

[16] The source of these data is OCFS, Juvenile Detention Automated System (2019 data as of 3/9/2020, 2020 data as of 4/26/2020) and the Juvenile Justice Information System and Connections (as of 5/4/2020).

There were 392 JD detention admissions across the state. As shown in Table 2.14, New York City accounted for 40 percent of those admissions, while the Rest of State accounted for 60 percent. Slightly more than half of all JD detention admissions statewide had a misdemeanor top charge (Appendix H).

Additional information about detention admissions of JDs by county, demographics and top offense charge are detailed in Appendix H.

Table 2.14
RTA JD Detention Admissions by Region

		Oct – Dec 2019	Jan – Mar 2020	Total
NYC	16	31	43	74
	17	46	38	84
	Total	77	81	158
ROS	16	84	63	147
	17	36	51	87
	Total	120	114	234
NYS	16	115	106	221
	17	82	89	171
	Total	197	195	392

Table 2.15 shows the number of unique JD youth confined in juvenile detention facilities on the last day of each quarter for New York City, the Rest of State and New York State. By the end of March 2020, 23 RTA JD youth were housed in a detention facility. More than three-quarters of those youth were from counties outside of New York City.

Table 2.15
RTA JD Youth in Detention
on Last Day of Quarter by Region

	12/31/2019		3/31/2020	
	#	%	#	%
NYC	7	21%	4	17%
ROS	27	79%	19	83%
NYS	34	100%	23	100%

Youth remanded on JD matters may be detained in either a non-secure detention or secure detention facility. Table 2.16 shows the extent to which each region and the state as a whole use non-secure versus secure detention. Youth who spent time in both facility types during their detention stay are categorized as “Mixed” for this table. Statewide, 81 percent of the 392 RTA detention admissions involved at least some time confined in a secure facility. Only 19 percent involved time spent solely in non-secure detention. This pattern was relatively consistent, with both regions relying heavily on secure facilities.

Table 2.16
RTA JD Detention Admissions by Setting Type
October 2019 - March 2020

	NYC		ROS		NYS	
	#	%	#	%	#	%
Total Admissions	**158**	**100%**	**234**	**100%**	**392**	**100%**
Non-Secure Detention (NSD)	20	13%	55	24%	75	24%
Secure Detention (SD)	124	78%	171	73%	295	73%
Mixed (NSD & SD)	14	9%	8	3%	22	3%

Table 2.17 provides information on the number of JD admissions to residential placement.[17] There were 98 JD youth admitted to placement. These admissions increased over time as cases proceeded in Family Court. A large proportion of the admissions (86%) involved youth from counties outside of New York City. This is consistent with admission patterns observed among non-RTA youth (those 15 or younger at time of offense).

Table 2.17
RTA JD Placement Admissions by Region

		Oct – Dec 2019	Jan – Mar 2020	Total
NYC	16	5	7	12
	17	0	2	2
	Total	5	9	14
ROS	16	28	37	65
	17	2	17	19
	Total	30	54	84
NYS	16	33	44	77
	17	2	19	21
	Total	35	63	98

Table 2.18 shows the number and percentage of JD youth in placement on the last day of each quarter included in this six-month period. By the end of 2019, there were 122 JDs in placement. The number increased to 170 on March 31,2020. Consistent with the admission patterns found in Table 2.17, a large proportion (about 85%) of these JD youth were from counties outside of New York City.

[17] Numbers presented in these tables may differ slightly from numbers shared in Part 3. This is because a youth can spend up to 14 days in detention following a dispositional placement order from the court while efforts are made to identify a suitable residential program and arrange transportation.

Table 2.18
RTA JD Youth in Placement
on Last Day of Quarter by Region

	12/31/2019		3/31/2020	
	#	%	#	%
NYC	20	16%	26	15%
ROS	102	84%	144	85%
NYS	122	100%	170	100%

JD placement admission settings vary by jurisdiction and custody type. In New York City, JDs disposed to placement are initially placed into the care and custody of the Administration for Children's Services (ACS) and are served in voluntary agencies through the City's Close to Home program. In the Rest of State, youth are placed in either a limited or non-secure OCFS-run facility or a community-based residential program operated by a voluntary agency. In both regions, the court has the authority to admit a JD youth to an OCFS secure facility for safety reasons. As shown in Table 2.19, 100 percent of JD youth in New York City were admitted to a community-based Close to Home residential provider. In the Rest of State, 56 JD youth (67%) were initially admitted to a community-based program, while a third (33%) were placed in an OCFS facility.

Placement is defined in Appendix A. Additional information on residential care admissions by county and demographics can be found in Appendix I.

Table 2.19
RTA JD Placement Admissions by Setting Type
October 2019 - March 2020

	NYC		ROS		NYS	
	#	%	#	%	#	%
Total Admissions	**14**	**100%**	**84**	**100%**	**98**	**100%**
OCFS Facility	0	0%	28	33%	28	29%
Community-Based Voluntary Agency	14	100%	56	67%	70	71%

Section III – Raise the Age Youth Outcomes from October 2018 – March 2020

The data in this section detail the outcomes of adolescent offender and juvenile delinquent arrests for youth aged 16- or 17-years-old when their offense was committed. This data includes outcomes of Youth Part court processing, probation intake, Family Court processing, and confinement for the first eighteen months of full RTA implementation:

- *Youth Part Outcomes* provides data on outcomes for 16- and 17-year-olds arrested for felonies and arraigned in the Youth Part of Criminal Court. Data includes release decisions at arraignment, dispositions and sentencing, and removal decisions.
- *Probation Intake Outcomes* provides data on the outcomes of 16- and 17-year-old juvenile delinquent intakes closed by local probation departments throughout the state.

- *Family Court Outcomes* provides data on the outcomes for 16- and 17-year-old youth who were processed as juveniles within Family Court, including JD finding outcomes and dispositions.
- *Youth Part Confinement Data* provides release and length of stay data on the pre-trial detention and post-conviction incarceration of adolescent offenders in confinement settings created under RTA: OCFS specialized secure detention facilities and DOCCS adolescent offender facilities.
- *Family Court Confinement Data* provides release and length of stay data for 16- and 17-year-olds temporarily confined to a locally run detention facility during the pendency of their delinquency case and/or placed outside of the home as a result of a delinquency finding.

Part 1: Youth Part Outcomes
October 1, 2018 – March 31, 2020

The data in this section details the outcomes of adolescent offender arrests during the first 18 months of RTA. This data includes detention and release decisions at arraignment by a Youth Part judge or accessible magistrate, dispositions of AO felony arrests, sentences imposed in Youth Part of Criminal Court, and information on cases that are removed from the Youth Part and processed as juvenile delinquents by probation departments and/or Family Court.

Adolescent Offender Release Status

The Raise the Age law includes a presumption for release in the Youth Part. At arraignment, judges may order youths released either on their own recognizance or under supervision/non-monetary conditions; remand them to specialized secure juvenile detention; or set bail, in which case they are not released until bail is posted.

There were 3,572 adolescent offender arraignments in Youth Part. These appearances included both those that took place in front of Youth Part judges and those that took place before accessible magistrates. Table 3.1 shows the release status of these cases for New York City, Rest of State and New York State: 73 percent were released at arraignment (62% released on their own recognizance, 10% under supervision or with other non-monetary conditions, and 1% after posting bail at arraignment) and 21 percent were not released (nearly 5% remanded by the judge and nearly 17% with bail set by the judge that was not posted at arraignment).[18]

In New York City, youth were more likely to be released at arraignment (79%) than in Rest of State (63%). Youth in New York City were also significantly more likely to be released on their own recognizance (73%) than in Rest of State (44%). In both regions, cases where the defendant was not released at arraignment were more likely to be instances where bail was set and not posted, rather than a decision by the judge to remand the youth to detention.

Additional detail showing the release status of AO arraignments by race/ethnicity and sex in New York City and Rest of State is shown in Appendix J.

[18] The source of these data is the New York State Computerized Criminal History system and the OCA Extract File as of April 17, 2020.

Table 3.1
Release Status at Arraignment
October 2018 - March 2020

	NYC		ROS		NYS	
	#	%	#	%	#	%
Total Arraignments	**2,249**	**100%**	**1,323**	**100%**	**3,572**	**100%**
Released at Arraignment	**1,766**	**79%**	**834**	**63%**	**2,600**	**73%**
Released on own Recognizance	1,635	73%	580	44%	2,215	62%
Released Under Supervision/Non-Monetary Conditions	116	5%	248	19%	364	10%
Bail Set and Posted at Arraignment	15	1%	6	<1%	21	1%
Not Released at Arraignment	**417**	**19%**	**347**	**26%**	**764**	**21%**
Remanded Without Bail	66	3%	97	7%	163	5%
Bail Set and Not Posted at Arraignment	351	16%	250	19%	601	17%
Not Reported	**66**	**3%**	**142**	**11%**	**208**	**6%**

Adolescent Offender Outcomes

Table 3.2 shows dispositions of adolescent offender arrests. Cases that were pending on March 31, 2020 are not included in this analysis. During the first 18 months of RTA implementation, criminal case processing was completed on 3,641 arrests in New York State. These arrests were prosecuted in the Youth Part or were otherwise disposed of through either: a decision by the district attorney (DA) to drop the case prior to arraignment; or a decision to remove the case from Youth Part to Family Court or probation intake after arraignment.[19]

Adolescent offender arrests disposed in New York City account for approximately two-thirds of the total statewide AO dispositions. Of the 2,386 arrests reported in New York City, the district attorney declined to prosecute 21 percent, or 498 cases. Because of court processing differences, district attorneys in jurisdictions outside of NYC rarely make this determination prior to arraignment. Table 3.2 shows New York City decline to prosecute (DTP) decisions as well as all processing outcomes following arraignment so that the outcomes of all statewide arrests can be displayed in one table. Of all arrests reported with final Criminal Court outcomes, only 4 percent (105) of New York City cases were disposed in Youth Part. Of those cases disposed in Youth Part, 79 were dismissed or resulted in some other favorable outcome or non-criminal violation. Fewer than 2 percent of arrests (26) resulted in a criminal conviction. In total, there were 22 felony and four misdemeanor convictions of 2,386 total arrests disposed.

In the Rest of State, of the 1,255 arrests where criminal case processing was completed by March 31, 2020, 91 percent were removed to Family Court or probation intake. A total of 115, or 9 percent, completed case processing in Youth Part. Of these, 66 were convicted of a felony and seven were convicted of a misdemeanor, representing 6 percent of arrest outcomes analyzed. The remaining 42 case outcomes, which represented 3 percent of total arrest outcomes analyzed, were dismissed or resulted in some other favorable outcome[20] or non-criminal conviction.

Additional detail showing dispositions of AO arrests by race/ethnicity and sex in New York City and Rest of State is shown in Appendix K.

[19] The source of these data is the New York State Computerized Criminal History system as of April 17, 2020.

[20] Other Non-Conviction dispositions include Covered by Another Case, Sealed Upon Termination of Criminal Action in Favor of the Accused (CPL 160.50), and Abated by Death.

Table 3.2
Dispositions of AO Arrests
October 2018 - March 2020

	NYC		ROS		NYS	
	#	%	#	%	#	%
Total Dispositions	**2,386**	**100%**	**1,255**	**100%**	**3,641**	**100%**
DA Declined to Prosecute	**498**	**21%**	**0**	**0%**	**498**	**14%**
Removed to Family Court/Probation Intake	**1,783**	**75%**	**1,140**	**91%**	**2,923**	**80%**
Disposed in Youth Part	**105**	**4%**	**115**	**9%**	**220**	**6%**
Dismissed - Not ACD	49	2%	29	2%	78	2%
Other Favorable or Non-Criminal Conviction	30	1%	13	1%	43	1%
Convicted of Felony	22	1%	66	5%	88	2%
Convicted of Misdemeanor	4	<1%	7	1%	11	<1%

Adolescent Offender Sentences and Youth Offender Status

Table 3.3 provides information on sentences imposed in the 88 arrests that resulted in a felony conviction in Youth Parts in New York City, the Rest of State and New York State. In 68 cases, youths were granted Youthful Offender (YO) status, which results in the conviction being sealed by law, and only available under limited circumstances. Of the 88 youth sentenced, 28 were sentenced to incarceration in a DOCCS Adolescent Offender facility, six were sentenced to a year or less in specialized secure detention, 20 were sentenced to specialized secure detention and probation, 29 were sentenced to probation and five received a conditional discharge. In New York City, 86 percent of 16- and 17-year-olds were granted youthful offender (YO) status, as compared to 74 percent in the Rest of State.

Additional detail showing sentences for felony adult convictions and YO adjudications in Youth Part by race/ethnicity and sex in New York City and Rest of State is shown in Appendix K.

Table 3.3
Sentences in Youth Part for Felony YO Adjudications and Adult Convictions
October 2018 - March 2020

	NYC			ROS			NYS		
	YO	Adult	Total	YO	Adult	Total	YO	Adult	Total
Total Felony Adjudications/Convictions	**19**	**3**	**22**	**49**	**17**	**66**	**68**	**20**	**88**
DOCCS Prison or AO Facility - 1+ Years	5	3	8	10	10	20	15	13	28
Specialized Secure Detention (SSD) - Up to 1 Year	2	0	2	3	1	4	5	1	6
Specialized Secure Detention (SSD) & Probation	4	0	4	15	1	16	19	1	20
Probation	3	0	3	21	5	26	24	5	29
Conditional Discharge	5	0	5	0	0	0	5	0	5

Adolescent Offender Removals to Family Court or Probation Intake

Under RTA, most youth charged with felonies were removed to Family Court or probation intake. Of the 3,572 arraignments statewide, 82 percent were removed to Family Court or probation intake and treated as juvenile delinquents. Offenses classified under the Penal Law as violent

were less likely to be removed from Youth Part than non-violent cases.[21] The data show that judges removed 76 percent of violent charges and 91 percent of non-violent charges, enabling youth to be processed as juvenile delinquents. Table 3.4 shows the number of cases removed by violent and non-violent offense arraignment categories.

Table 3.4
AO Removals from Youth Part to Family Court or Probation Intake
October 2018 – March 2020

		Total	Violent	Non-Violent
NYC	Total Arraignments	2,168	1,469	699
	Cases Removed	1,783	1,137	646
	% Removed	82%	77%	92%
ROS	Total Arraignments	1,404	660	744
	Cases Removed	1,140	476	664
	% Removed	81%	72%	89%
NYS	Total Arraignments	3,572	2,129	1,443
	Cases Removed	2,923	1,613	1,310
	% Removed	82%	76%	91%

Table 3.4 shows that 82 percent of AOs arraigned in Youth Part were removed. Table 3.5 shows 79 percent were removed to probation for intake and 21 percent were removed to Family Court for petition. Most New York City cases were removed to probation for intake (92% of removals). In the Rest of State, youth were less likely to be removed to probation (58% of removals) and were more likely to be removed directly to Family Court for petition (42%).

Table 3.5
AO Removals to Family Court or Probation Intake by Removal Type
October 2018 - March 2020

	NYC		ROS		NYS	
	#	%	#	%	#	%
Total AO Removals	**1,783**	**100%**	**1,140**	**100%**	**2,923**	**100%**
Removed to Family Court	140	8%	474	42%	614	21%
Removed to Probation Intake	1,643	92%	666	58%	2,309	79%

Under the RTA law, district attorneys have 30 days from arraignment to submit a motion to prevent a case from being removed to Family Court or juvenile probation intake (CPL §722.23[1][a]). Data from the first 18 months of implementation show many adolescent offender removals occur shortly after arraignment, but there are significant regional differences and youth wait longer for decisions

[21] Cases may not be eligible for removal to Family Court or probation intake if the court finds the defendant allegedly displayed a deadly weapon, caused significant physical injury or engaged in unlawful sexual conduct, or that there are other extraordinary circumstances.

outside of New York City. Table 3.6 shows that 50 percent of cases throughout the state were removed the same day or the next day, and 71 percent were removed within seven days of arraignment. In the Rest of State, the time between arraignment and removal took longer, on average, than in New York City. In the Rest of State, 54 percent of cases were removed within seven days from arraignment compared to 81 percent of cases in New York City.

Table 3.6
AO Removals to Family Court or Probation Intake - Time to Removal
October 2018 - March 2020

	NYC		ROS		NYS	
	#	%	#	%	#	%
Total Removals	**1,783**	**100%**	**1,140**	**100%**	**2,923**	**100%**
Same Day/Next Day	1,042	58%	422	37%	1,464	50%
2-7 Days	411	23%	198	17%	609	21%
8-14 Days	74	4%	111	10%	185	6%
15-30 Days	82	5%	220	19%	302	10%
31-45 Days	40	2%	114	10%	154	5%
46-60 Days	49	3%	31	3%	80	3%
61 Days or More	85	5%	41	4%	126	4%
Time to Removal - Unknown	0	0%	3	<1%	3	<1%

Part 2: Probation Intake Outcomes
October 1, 2018 – March 31, 2020

The data in this section detail the outcomes of probation intakes closed during the first 18 months of RTA.[22]

In New York State, most juvenile delinquent cases proceed through probation intake, where they are reviewed for possible adjustment and youth may potentially participate in services as part of a process where their cases can be adjusted (diverted). One of the goals of Raise the Age was to make this Family Court process available to 16- and 17-year-olds who had previously been charged as adults. An intake is successfully adjusted and closed when the youth completes all requirements imposed by the probation department and the case is resolved without a referral to the presentment agency. An intake can also be referred to Family Court petition immediately or have an adjustment terminated and referred to petition if the youth does not complete the services or comply with the requirements set by probation.

Table 3.7 and Table 3.8 show the outcomes of the 6,360 intakes closed in New York State by region. In New York City, intakes were more likely to be referred immediately to petition than in the Rest of State (72% vs. 43%) and half as likely to be successfully adjusted (22% vs. 45%). As noted earlier, however, a large number of cases referred to petition in New York City are diverted from Family Court by the New York City Law Department and do not result in a petition. This results in a smaller number of petition filings in New York City as compared to the Rest of State.

[22] The source of these data is the Caseload Explorer Database as of April 14, 2020.

Additional detail showing the outcomes of closed intakes by county, race/ethnicity and sex in New York City and Rest of State is available in Appendix L.

Table 3.7
NYC Probation Intakes Closed Age 16 and 17 by Offense Class
Closed October 2018 – March 2020

	Felony	Misdemeanor	Total
Total Intakes Closed	**1,831**	**1,614**	**3,445**
Referred Immediately	1,449	1,027	2,476
Adjustment Terminated and Referred	103	103	206
Adjusted	279	484	763
Adjustment Rate	**15%**	**30%**	**22%**

Table 3.8
ROS Probation Intakes Closed Age 16 and 17 by Offense Class
Closed October 2018 – March 2020

	Felony	Misdemeanor	Total
Total Intakes Closed	**665**	**2,250**	**2,915**
Referred Immediately	385	878	1,263
Adjustment Terminated and Referred	73	256	329
Adjusted	207	1,115	1,322
Adjustment Rate	**31%**	**50%**	**45%**

Note: 49 cases where offense class is unknown are not shown.

Part 3: Family Court Outcomes
October 1, 2018 – March 31, 2020

The data in this section detail the outcomes of petitions disposed[23] during the first 18 months of RTA.[24] Dispositional outcomes are defined in Appendix A.

Of the 1,908 petitions disposed for 16- and 17-year-old youth, 553 were from New York City and 1,355 were from the Rest of State. Tables 3.9 and 3.10 show the dispositions by petition offense category and disposition type for each region.

In New York City, cases involving youth with felony petitions that were filed after removal from the Youth Part were more likely to result in a juvenile delinquency finding (54%) than misdemeanor petitions (19%). Youth with felony petitions were subsequently more likely to receive placement and probation dispositions than misdemeanor petitions (46% among felonies, as compared to 14% among misdemeanors). Youth with misdemeanor cases more often received adjournment in contemplation of dismissal (ACD) and dismissals/no findings than felony cases.

[23] A case is disposed when there is either a finding of delinquency against the 16- or 17- year old, the case was adjourned in contemplation of dismissal (ACD), or the case was dismissed without a finding against the youth.
[24] The source of these data is the Office of Court Administration delinquency petitions database as of April 15, 2020.

Disposition patterns differed in the Rest of State, with smaller differences between the proportion of youth with felony cases receiving a JD finding (47%) and the proportion of youth with misdemeanor cases receiving a JD finding (35%). There were also smaller differences in the percent of felony cases receiving placement or probation dispositions (40%) and the proportion of misdemeanor cases receiving these dispositions (29%). While misdemeanor cases were more likely than felony cases to receive ACDs, comparable proportions of felony and misdemeanor petitions were disposed as dismissed/no finding.

Additional detail showing the outcomes of disposed petitions by county, race/ethnicity and sex in New York City and the Rest of State is shown in Appendix M.

Table 3.9
NYC Family Court Age 16 and 17 JD Petitions Disposed by Petition Class Category and Disposition Type
October 2018 – March 2020

	Felony		Misdemeanor	
	#	%	#	%
Total Petitions Disposed	**282**	**100%**	**271**	**100%**
JD Findings	**152**	**54%**	**51**	**19%**
Placement	49	17%	8	3%
Probation	82	29%	30	11%
Conditional Discharge	21	7%	13	5%
ACD	**41**	**15%**	**79**	**29%**
Dismissal/No Finding	**89**	**32%**	**141**	**52%**

Table 3.10
ROS Family Court Age 16 and 17 JD Petitions Disposed by Petition Class Category and Disposition Type
October 2018 – March 2020

	Felony		Misdemeanor	
	#	%	#	%
Total Petitions Disposed	**572**	**100%**	**783**	**100%**
JD Findings	**267**	**47%**	**275**	**35%**
Placement	97	17%	85	11%
Probation	131	23%	140	18%
Conditional Discharge	39	7%	50	6%
ACD	**126**	**22%**	**241**	**31%**
Dismissal/No Finding	**179**	**31%**	**267**	**34%**

Part 4: Youth Part Confinement Data
October 1, 2018 – March 31, 2020

During the first 18 months of RTA implementation, 733 adolescent offenders were released from specialized secure detention facilities.[25] Those 733 youth spent an average of 31 days in these facilities. As shown in Table 3.11, adolescent offenders in the Rest of State had a slightly longer average length of stay (32 days) than those in New York City (30 days).

Table 3.11
AO Specialized Secure Detention (SSD) Releases:
Average Length of Stay (ALOS)
October 2018 – March 2020

	# Released	ALOS (Days)
NYC	311	30
ROS	422	32
NYS	733	31

Note: Figures include pre- and post-sentence youth.

During this same period, two adolescent offenders were released from a DOCCS facility.[26] Those two youth spent an average of 248 days in DOCCS custody after being sentenced in a court outside of New York City (Table 3.12).

Table 3.12
AO DOCCS Releases:
Average Length of Stay (ALOS)
October 2018 – March 2020

	# Released	ALOS (Days)
NYC	0	--
ROS	2	248
NYS	2	248

Note: Length of stay only includes time spent in a state correctional facility, not city or county jail time.

Part 5: Family Court Confinement Data
October 1, 2018 – March 31, 2020

There were 935 16- and 17-year-old juvenile delinquents released from non-secure and secure detention facilities.[27] Those youth spent an average of 12 days in detention. As shown in Table

[25] The source of these data is OCFS, Juvenile Detention Automated System (2018 data as of 3/2/2019, 2019 data as of 3/9/2020, 2020 data as of 4/26/2020).
[26] The source of these data is DOCCS, Population Management System (data as of 4/4/2020).
[27] The source of these data is OCFS, Juvenile Detention Automated System (2018 data as of 3/2/2019, 2019 data as of 3/9/2020, 2020 data as of 4/26/2020) and Juvenile Justice Information System and Connections as of 5/4/2020.

3.13, the average length of stay for JDs in the Rest of State (16 days) is more than twice the average length of stay for those from New York City (7 days).

Table 3.13
RTA JD Detention Releases:
Average Length of Stay (ALOS)
October 2018 – March 2020

	# Released	ALOS (Days)
NYC	391	7
ROS	544	16
NYS	935	12

Source: OCFS, Juvenile Detention Automated System (2018 data as of 3/2/2019, 2019 data as of 3/9/2020, 2020 data as of 4/26/2020)

Table 3.14 provides information on the 29 16- and 17-year-old JDs released from placement and their average length of stay during the first 18 months of RTA implementation. Most of these releases (26 or 90%) were from counties outside of New York City. On average, these 29 youth spent 238 days (approximately 8 months) in placement.

Table 3.14
RTA JD Placement Releases:
Average Length of Stay (ALOS)
October 2018 – March 2020

	# Released	ALOS (Days)
NYC	3	302
ROS	26	230
NYS	29	238

Source: OCFS, Juvenile Justice Information System and Connections as of 5/4/2020

Appendices

Appendix A – Glossary of Terms

Adolescent Offender (AO) – An individual charged with a felony (except those included in state Vehicle and Traffic Law) who was 16 on or after Oct. 1, 2018 or 17 on or after Oct. 1, 2019 and the felony was committed on or after that same date as defined in state Criminal Procedure Law (CPL) 1.20(44).

Youthful Offender (YO) – Youthful Offender status is granted at the sentencing of a youth less than nineteen years old within a Criminal Court setting. The youth's records are sealed upon a YO adjudication, as outlined in CPL 720.35, with the intent to relieve the eligible youth from the burden of a criminal record.

Juvenile Offender (JO) – An Individual who is 13,14, or 15 years old at the time of a crime and arrested for a serious violent felony as defined in state CPL (1.20 (42)).

Juvenile Delinquent (JD) – An Individual who is 7 through 15 years old and charged with committing misdemeanor offenses and non-JO felonies, and 16 and 17-year-olds who are charged with misdemeanors or charged with felonies and removed from Youth Part.

Youth Part – A branch of Supreme and County Criminal Court created by Raise the Age Legislation where arraignments and proceeding for AOs and JOs occur.

Accessible Magistrate – A judge designated by the Appellate Division within each Judicial Department who, like judges in Youth Part, receives specialized training in adolescent development, custody and care of youth, and effective treatment methods for reducing unlawful conduct. Accessible Magistrates act in the place of the Youth Part for certain first appearance proceedings that generally occur when the designated Youth Part is unavailable (evenings, weekends, and holidays).

Detention – Youth temporarily confined in a secure or non-secure juvenile facility either after an arrest or during the probation intake, petition, or probation violation process and youth being held on warrants. A detention admission occurs when the youth enters the facility.

Probation Intake – Probation departments are responsible for screening juvenile delinquency cases for the Family Court following an arrest to determine whether the filing of a juvenile delinquency petition is warranted (FCA §308.1). These cases are generally referred to the probation department by a peace or police officer, detention facility administrator (when a juvenile has been temporarily detained following arrest), or by the Youth Part.

Probation Intake – Cases Closed – There are three possible probation intake case-closure outcomes.

- **Successfully Adjusted.** A case is classified as successfully "adjusted" and closed when the resolution of the case is achieved (1) without court intervention or (2) following the return of the case by the presentment agency pre-petition or family court post-petition to probation intake for resolution. This includes complaints that are resolved at the initial conference or after a period of adjustment services.
- **Referred to Petition Immediately.** The adjustment process was not commenced due to exclusionary criteria [FCA §308.1] or suitability criteria [FCR §205.22(c)]. Among the

reasons for immediate referral are offense seriousness, prior delinquency history, and a person's (e.g., police officer, victim, offender) request for access to the presentment agency for petition-filing consideration.

- **Adjustment Terminated and Referred for Petition.** Adjustment termination and referral to the presentment agency for petition consideration occurs when the resolution of a case (complaint) cannot be reached after the commencement of the adjustment process.

Petition Filings – The presentment agency (Corporation Counsel in NYC and local county attorneys' offices elsewhere) is the only agency allowed by law [FCA §310.1(2)] to file a Family Court delinquency petition. The "initial" petition is filed by the presentment agency following an arrest and charges a juvenile with the alleged commission of one or more crimes. This petition may be filed when the presentment agency determines that there is legally sufficient evidence to commence a delinquency action in Family Court (FCA §311.2).

Petition Dispositions – There are several possible outcomes for petitions filed in Family Court. JD Findings dispositions include Placement, Probation Supervision, and Conditional Discharge, and a JD Finding outcome occurs when the court determines a juvenile is in need of supervision, treatment, or confinement.

- **Dispositions to Placement.** The number of initial JD petitions disposed where the juvenile was ordered by the Court into residential placement. A juvenile can be placed in OCFS custody or in County DSS custody.
- **Dispositions to Probation Supervision.** A court order for probation supervision requires a juvenile to comply with conditions set forth in the order. Compliance with these conditions is monitored by the local probation department.
- **Conditional Discharge.** A court order for conditional discharge requires a juvenile to comply with one or more conditions specified in the order and may include some degree of compliance monitoring by the local probation department.
- **Adjournment in Contemplation of Dismissal (ACD).** An ACD court order requires a juvenile to comply with one or more of the conditions that can be specified in the order and, occasionally, can require some degree of compliance monitoring by the local probation department. If the petition is not brought back before the court during the adjournment period, the case is deemed to have been dismissed upon the expiration of the order.
- **Other No JD Findings.** Includes all dispositions other than placement, probation, conditional discharge, and ACD. These dispositions can be cases that are Withdrawn (the presentment agency decided not to proceed with the petition), Dismissed (straight dismissal of a petition by the court), "Petition Granted", "Petition Settled", PINS finding, transfer to another court, or a referral back to probation intake with no final dismissal.

Placement – A youth is placed when he or she is admitted to an OCFS-run facility or voluntary (non-secure) agency or to LDSS custody in a voluntary (non-secure) agency. Placement admissions may be the result of initial petition dispositions, supplemental (post-disposition) petition dispositions, or returns to custody for juveniles released to aftercare.

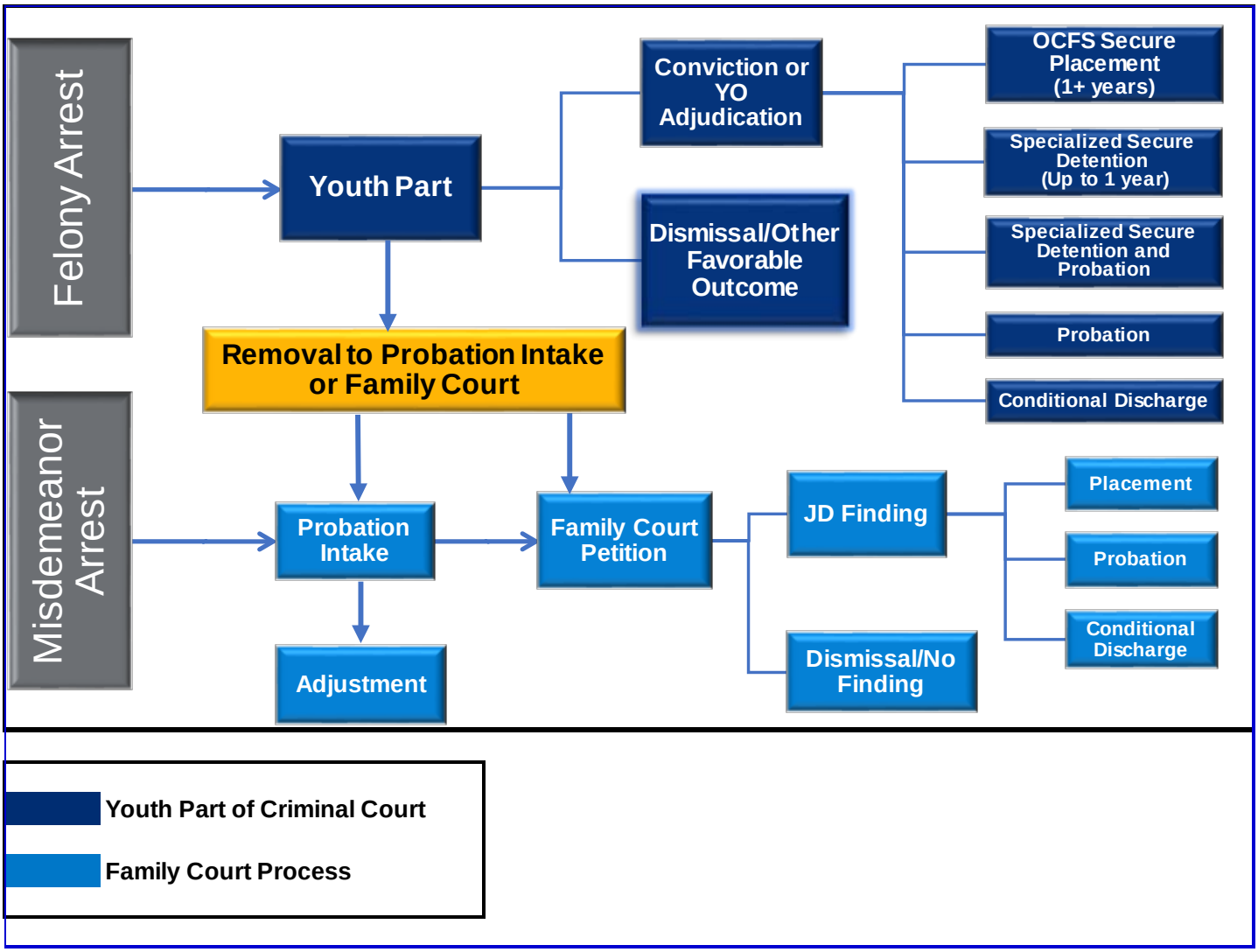
Race/Ethnicity – Race and ethnicity are recorded by police at the time of arrest, by probation at the point of probation intake, by the court at petition, and/or by facility staff at detention and placement facilities. In these tables, four categories are displayed: White, Black, Hispanic, and

Other/Not Reported. The White, Black, and Other categories include only persons of non-Hispanic origin.

New York City (NYC) – The five counties, also known as boroughs, of Bronx, Kings, New York, Queens, and Richmond.

Rest of State (ROS) – The 57 counties outside the five New York City boroughs.

Appendix B – Case Processing of 16- and 17-Year-Olds as of June 2, 2020



- Note: Within the above chart, *Family Court Process* refers to the activities and processes within the Family Court and local probation departments in response to a JD case removed from Youth Part, as covered under the NYS Family Court Act.
- Note: The above chart reflects case processing as of June 2, 2020. Prior to this date, AOs sentenced to a determinate or indeterminate sentence to confinement of a year or more prior to their 18th birthday were housed in a DOCCS facility specifically for AO youth. Older youth were housed in an adult DOCCS facility. As of June 2, 2020, AO youth receiving such a sentence before their 21st birthday are housed in an OCFS secure facility. Older youth will be housed in an adult DOCCS facility.
- Note: District attorneys and presentment agents act on behalf of local governments within Youth Part and Family Court respectively. Both entities have the option to decline to prosecute or decline to proceed with cases. This option is not included within the above chart.

Appendix C – New York State Youth Demographics (Race-Ethnicity, Sex, Age)

2018 NYS 16 and 17-Year-Old Population Demographics

	NYC		ROS	
	#	%	#	%
Total	**178,636**	**100%**	**283,910**	**100%**
Sex				
Male	90,412	51%	145,290	51%
Female	88,224	49%	138,620	49%
Race/Ethnicity				
White	43,966	25%	195,920	69%
Black	46,414	26%	31,763	11%
Hispanic	63,585	36%	40,972	14%
Other	24,671	14%	15,255	5%
Age				
7-12	555,847	55%	777,566	53%
13-15	268,281	27%	410,993	28%
16-17	178,636	18%	283,910	19%

Activity Tables

Appendix D – Felony Arrests (Tables D-1 – D-4)

Table D-1
AO Arrests by County
October 2019 - March 2020

	Oct - Dec 2019		Jan - Mar 2020		Total
	16	17	16	17	
NYS Total	**579**	**520**	**522**	**607**	**2,228**
NYC Total	**389**	**341**	**346**	**424**	**1,500**
Bronx	78	63	74	71	286
Kings	104	127	115	164	510
New York	115	85	82	83	365
Queens	81	56	66	96	299
Richmond	11	10	9	10	40
ROS Total	**190**	**179**	**176**	**183**	**728**
Albany	8	7	5	7	27
Allegany	4	1	1	1	7
Broome	4	9	3	0	16
Cattaraugus	0	3	2	0	5
Cayuga	1	3	0	0	4
Chautauqua	5	1	1	2	9
Chemung	0	0	0	3	3
Chenango	0	0	0	0	0
Clinton	0	0	2	0	2
Columbia	3	2	1	0	6
Cortland	0	0	3	0	3
Delaware	0	3	0	0	3
Dutchess	4	2	2	8	16
Erie	36	21	28	19	104
Essex	0	1	1	0	2
Franklin	0	0	0	0	0
Fulton	3	0	0	1	4
Genesee	0	0	1	1	2
Greene	0	1	0	0	1
Hamilton	0	0	0	0	0
Herkimer	0	0	0	1	1
Jefferson	3	5	1	0	9
Lewis	0	0	0	3	3
Livingston	1	0	0	0	1
Madison	2	1	0	1	4

	Oct - Dec 2019		Jan - Mar 2020		Total
	16	17	16	17	
ROS Continued					
Monroe	8	8	18	12	46
Montgomery	4	1	1	2	8
Nassau	14	18	31	27	90
Niagara	3	7	2	5	17
Oneida	5	5	2	6	18
Onondaga	25	9	29	16	79
Ontario	0	0	0	0	0
Orange	4	1	2	3	10
Orleans	0	0	3	1	4
Oswego	0	0	0	0	0
Otsego	2	1	0	3	6
Putnam	1	0	0	2	3
Rensselaer	8	8	1	1	18
Rockland	6	1	4	4	15
St. Lawrence	4	3	1	0	8
Saratoga	1	0	1	3	5
Schenectady	4	5	2	5	16
Schoharie	0	0	0	2	2
Schuyler	0	0	1	1	2
Seneca	0	0	0	0	0
Steuben	0	0	0	1	1
Suffolk	7	19	4	18	48
Sullivan	0	1	0	1	2
Tioga	0	0	1	0	1
Tompkins	1	3	1	0	5
Ulster	1	4	0	2	7
Warren	0	0	0	0	0
Washington	0	1	5	1	7
Wayne	0	0	0	0	0
Westchester	18	22	14	19	73
Wyoming	0	1	2	1	4
Yates	0	1	0	0	1

Source: DCJS, Computerized Criminal History Database (as of 04/17/2020).

Table D-2
AO Arrests by Race/Ethnicity
October 2019 - March 2020

	NYC		ROS		NYS	
	#	%	#	%	#	%
White	28	2%	249	34%	277	12%
Black	1,000	67%	329	45%	1,329	60%
Hispanic	403	27%	129	18%	532	24%
Other	69	4%	21	3%	90	4%
Total	1,500	100%	728	100%	2,228	100%

Source: DCJS, Computerized Criminal History Database (as of 4/17/2020).

Tables D-3
AO Arrests by Sex
October 2019 - March 2020

	NYC		ROS		NYS	
	#	%	#	%	#	%
Male	1,272	85%	607	83%	1,879	84%
Female	228	15%	121	17%	349	16%
Total	1,500	100%	728	100%	2,228	100%

Source: DCJS, Computerized Criminal History Database (as of 4/17/2020).

Table D-4
AO Arrests by Charge
October 2019 – March 2020

		NYC	ROS	NYS
Total Arrests		**1,500**	**728**	**2,228**
Violent	**Total Violent**	**906**	**329**	**1,235**
	PL 160 Robbery	528	110	638
	PL 120 Assault	212	59	271
	PL 265 Firearms and Other Dangerous Weapons	94	39	133
	PL 140 Burglary	31	50	81
	PL 490 Making a Terroristic Threat	4	28	32
	PL 130 Sex Offenses	10	17	27
	PL 125 Homicide (Attempted)	9	10	19
	PL 125 Homicide (Completed)	6	8	14
	PL 121 Strangulation	6	2	8
	PL 240 Offenses Against Public Order	2	6	8
	PL 135 Kidnapping, Coercion and Related Offenses	3	0	3
	PL 150 Arson	1	0	1
Non-Violent	**Total Non-Violent**	**594**	**399**	**993**
	PL 155 Larceny	283	92	375
	PL 165 Other Offenses Relating to Theft	56	64	120
	PL 145 Criminal Mischief	32	83	115
	PL 160 Robbery	83	15	98
	PL 140 Burglary	36	43	79
	PL 220 Controlled Substances Offenses - Possession	14	22	36
	PL 220 Controlled Substances Offenses - Sale	12	2	14
	PL 215 Other Offenses Relating to Judicial Proceedings	14	19	33
	PL 120 Assault	20	8	28
	PL 170 Forgery and Related Offenses	12	12	24
	PL 265 Firearms and Other Dangerous Weapons	11	9	20
	PL 235 Obscenity	1	8	9
	PL 105 Conspiracy	5	2	7
	PL 263 Sexual Performance by a Child	3	3	6
	PL 221 Offenses Involving Marihuana	4	2	6
	PL 240 Offenses Against Public Order	1	4	5
	PL 250 Offenses Against the Right to Privacy	1	3	4
	PL 156 Offenses Involving Computers	4	0	4
	PL 190 Other Frauds	0	3	3
	PL 130 Sex Offenses	2	0	2
	PL 205 Escape and Other Offenses Relating to Custody	0	2	2
	PL 150 Arson	0	1	1
	AM 353 Animal Cruelty	0	1	1
	VTL 0511 - Aggravated Unlicensed Operation Motor Vehicle	0	1	1

Source: DCJS, Computerized Criminal History Database (as of 4/17/2020).

Appendix E – Youth Part Arraignments (Table E-1)

Table E-1
AO Arraignments by County
October 2019 - March 2020

	Oct - Dec 2019		Jan - Mar 2020		Total
	16	17	16	17	
NYS Total	**483**	**406**	**406**	**483**	**1,778**
NYC Total	**306**	**253**	**255**	**311**	**1,125**
Bronx	55	38	47	40	180
Kings	83	89	80	117	369
New York	95	73	76	71	315
Queens	63	38	43	73	217
Richmond	10	15	9	10	44
ROS Total	**177**	**153**	**151**	**172**	**653**
Albany	5	5	3	3	16
Allegany	4	0	1	1	6
Broome	4	8	3	1	16
Cattaraugus	0	2	2	0	4
Cayuga	1	3	0	0	4
Chautauqua	2	1	3	2	8
Chemung	0	0	0	2	2
Chenango	0	0	0	0	0
Clinton	0	0	2	0	2
Columbia	3	1	1	0	5
Cortland	0	0	3	0	3
Delaware	0	2	0	0	2
Dutchess	3	2	2	8	15
Erie	33	21	26	19	99
Essex	0	1	0	0	1
Franklin	0	0	0	0	0
Fulton	3	0	0	1	4
Genesee	0	0	1	1	2
Greene	0	1	0	0	1
Hamilton	0	0	0	0	0
Herkimer	0	0	0	0	0
Jefferson	4	5	1	0	10
Lewis	0	0	0	2	2
Livingston	0	0	0	0	0
Madison	1	1	1	1	4

	Oct - Dec 2019		Jan - Mar 2020		Total
	16	17	16	17	
ROS Continued					
Monroe	9	8	9	11	37
Montgomery	3	1	1	1	6
Nassau	14	18	29	27	88
Niagara	2	3	2	5	12
Oneida	5	3	2	6	16
Onondaga	25	6	20	17	68
Ontario	0	0	0	0	0
Orange	4	1	3	2	10
Orleans	4	0	3	1	8
Oswego	0	0	0	0	0
Otsego	2	2	0	3	7
Putnam	1	0	0	3	4
Rensselaer	8	8	2	1	19
Rockland	6	1	4	4	15
St. Lawrence	4	3	1	0	8
Saratoga	1	0	1	3	5
Schenectady	4	4	2	6	16
Schoharie	0	0	0	1	1
Schuyler	0	0	1	1	2
Seneca	0	0	0	0	0
Steuben	0	0	0	0	0
Suffolk	7	17	4	18	46
Sullivan	0	1	0	1	2
Tioga	0	0	1	0	1
Tompkins	1	3	0	0	4
Ulster	0	3	0	0	3
Warren	0	0	0	0	0
Washington	0	1	5	1	7
Wayne	0	0	0	0	0
Westchester	14	16	10	19	59
Wyoming	0	1	2	0	3
Yates	0	0	0	0	0

Source: DCJS, Computerized Criminal History Database (as of 04/17/2020).

Appendix F – Juvenile Delinquent Intakes Opened (Tables F-1 – F-5)

Table F-1
Probation Intakes Age 16-17 Intakes Opened by Offense Class and County
October 2019 – March 2020

	Felony			Misdemeanor			Total
	16	17	Total	16	17	Total	Total
NYS Total	**799**	**676**	**1,475**	**1,101**	**1075**	**2,176**	**3,651**
NYC Total	**586**	**509**	**1,095**	**396**	**486**	**882**	**1,977**
ROS Total	**213**	**167**	**380**	**705**	**589**	**1,294**	**1,674**
Albany	26	14	40	56	33	89	129
Allegany	0	0	0	2	4	6	6
Broome	4	4	8	33	19	52	60
Cattaraugus	5	1	6	5	5	10	16
Cayuga	0	2	2	6	6	12	14
Chautauqua	3	2	5	17	16	33	38
Chemung	0	0	0	4	6	10	10
Chenango	0	0	0	10	3	13	13
Clinton	1	0	1	2	2	4	5
Columbia	4	0	4	4	0	4	8
Cortland	3	0	3	4	4	8	11
Delaware	0	1	1	3	2	5	6
Dutchess	7	7	14	15	11	26	40
Erie	20	11	31	91	81	172	203
Essex	1	0	1	0	2	2	3
Franklin	0	0	0	7	4	11	11
Fulton	3	1	4	1	4	5	9
Genesee	0	0	0	5	2	7	7
Greene	0	0	0	0	1	1	1
Hamilton	0	0	0	1	0	1	1
Herkimer	0	1	1	2	3	5	6
Jefferson	6	6	12	4	18	22	34
Lewis	0	2	2	1	0	1	3
Livingston	3	0	3	8	3	11	14
Madison	3	2	5	4	2	6	11
Monroe	20	10	30	23	30	53	83
Montgomery	0	0	0	0	0	0	0
Nassau	10	6	16	64	71	135	151
Niagara	6	3	9	28	20	48	57
Oneida	3	2	5	24	13	37	42
Onondaga	12	6	18	27	16	43	61
Ontario	0	0	0	4	10	14	14
Orange	6	3	9	27	18	45	54
Orleans	7	0	7	2	2	4	11
Oswego	0	0	0	11	9	20	20
Otsego	0	4	4	4	3	7	11
Putnam	0	2	2	5	5	10	12
Rensselaer	3	0	3	14	13	27	30
Rockland	0	0	0	6	5	11	11
St Lawrence	3	2	5	10	1	11	16

Table F-1, Cont'd
Probation Intakes Age 16-17 Intakes Opened by Offense Class and County
October 2019 – March 2020

	Felony			Misdemeanor			Total
	16	17	Total	16	17	Total	Total
ROS Continued							
Saratoga	1	1	2	15	11	26	28
Schenectady	10	12	22	13	9	22	44
Schoharie	3	0	3	1	2	3	6
Schuyler	1	0	1	0	0	0	1
Seneca	0	0	0	3	9	12	12
Steuben	0	0	0	5	6	11	11
Suffolk	7	19	26	25	27	52	78
Sullivan	1	2	3	6	6	12	15
Tioga	1	0	1	4	2	6	7
Tompkins	1	3	4	7	7	14	18
Ulster	0	2	2	13	10	23	25
Warren	0	0	0	4	1	5	5
Washington	0	0	0	0	0	0	0
Wayne	0	0	0	12	4	16	16
Westchester	29	36	65	63	48	111	176
Wyoming	0	0	0	0	0	0	0
Yates	0	0	0	0	0	0	0

Source: DCJS, Caseload Explorer Database (as of 04/14/2020).
Note: There are 39 Intakes with an unknown offense class that are not included in this table.

Table F-2
Probation Intakes Age 16 & 17 Opened by Race/Ethnicity and Offense Class

NYC
October 2019 – March 2020

	Felony		Misdemeanor		Total	
	#	%	#	%	#	%
White	25	2%	37	4%	62	3%
Black	718	66%	502	57%	1,220	62%
Hispanic	290	26%	297	34%	587	30%
Other	41	4%	33	4%	74	4%
Not Reported	21	2%	13	1%	34	2%
Total	1,095	100%	882	100%	1,977	100%

ROS
October 2019 – March 2020

	Felony		Misdemeanor		Total	
	#	%	#	%	#	%
White	146	38%	538	42%	684	41%
Black	136	36%	487	38%	623	37%
Hispanic	74	19%	190	15%	264	16%
Other	13	3%	36	3%	49	3%
Not Reported	11	3%	43	3%	54	3%
Total	380	100%	1,294	100%	1,674	100%

Source: DCJS, Caseload Explorer Database (as of 04/14/2020).

Note: There are 39 Intakes with an unknown offense class that are not included in these tables.

Table F-3
Probation Intakes Age 16-17 Opened by Race-Ethnicity and County, October 2019 – March 2020

	White	Black	Hispanic	Other	Not Reported	Total
NYS Total	**760**	**1,861**	**857**	**124**	**88**	**3,690**
NYC Total	**62**	**1,229**	**589**	**74**	**34**	**1,988**
ROS Total	**698**	**632**	**268**	**50**	**54**	**1,702**
Albany	42	66	18	2	1	129
Allegany	3	0	0	2	1	6
Broome	27	27	5	1	0	60
Cattaraugus	10	5	0	1	0	16
Cayuga	10	1	1	0	2	14
Chautauqua	27	4	8	0	0	39
Chemung	5	2	0	3	0	10
Chenango	13	0	0	0	0	13
Clinton	4	0	0	0	1	5
Columbia	1	7	0	0	0	8
Cortland	8	1	1	0	1	11
Delaware	4	1	1	0	0	6
Dutchess	18	10	10	2	1	41
Erie	62	119	15	5	5	206
Essex	3	0	0	0	0	3
Franklin	10	0	0	0	1	11
Fulton	8	1	0	0	0	9
Genesee	6	1	0	0	0	7
Greene	1	0	0	0	0	1
Hamilton	1	0	0	0	0	1
Herkimer	4	1	0	0	1	6
Jefferson	26	6	0	2	0	34
Lewis	3	0	0	0	0	3
Livingston	13	1	1	0	0	15
Madison	10	1	0	0	1	12
Monroe	20	44	14	2	3	83
Montgomery	1	1	1	0	0	3
Nassau	45	55	46	9	0	155
Niagara	22	32	3	0	0	57
Oneida	23	10	5	4	0	42
Onondaga	22	32	8	0	0	62
Ontario	9	4	0	1	0	14
Orange	15	18	17	0	4	54
Orleans	8	1	1	1	0	11
Oswego	15	2	2	0	1	20
Otsego	8	1	0	0	2	11
Putnam	9	1	1	1	0	12
Rensselaer	15	14	0	0	1	30
Rockland	2	5	3	1	0	11
St Lawrence	7	0	0	0	9	16

Table F-3, Cont'd
Probation Intakes Age 16-17 Opened by Race-Ethnicity and County, October 2019 – March 2020

	White	Black	Hispanic	Other	Not Reported	Total
ROS Continued						
Saratoga	20	4	2	1	1	28
Schenectady	15	15	10	2	2	44
Schoharie	6	0	0	0	0	6
Schuyler	2	1	0	0	0	3
Seneca	7	3	3	0	0	13
Steuben	8	1	1	1	0	11
Suffolk	25	23	18	5	7	78
Sullivan	6	6	2	0	1	15
Tioga	6	1	0	0	0	7
Tompkins	10	7	0	1	0	18
Ulster	13	8	4	0	0	25
Warren	3	0	0	0	2	5
Washington	0	0	0	0	0	0
Wayne	8	5	1	1	1	16
Westchester	24	82	65	2	5	178
Wyoming	3	1	0	0	0	4
Yates	2	1	1	0	0	4

Source: DCJS, Caseload Explorer Database (as of 04/14/2020).

Table F-4
Probation Intakes Age 16 & 17 Opened by Sex and Offense Class

NYC
October 2019 – March 2020

	Felony		Misdemeanor		Total	
	#	%	#	%	#	%
Male	915	84%	704	80%	1,619	82%
Female	174	16%	174	20%	348	18%
Not Reported	6	1%	4	0%	10	1%
Total	1,095	100%	882	100%	1,977	100%

ROS
October 2019 – March 2020

	Felony		Misdemeanor		Total	
	#	%	#	%	#	%
Male	313	82%	857	66%	1,170	70%
Female	67	18%	422	33%	489	29%
Not Reported	0	0%	15	1%	15	1%
Total	380	100%	1,294	100%	1,674	100%

Source: DCJS, Caseload Explorer Database (as of 04/14/2020).
Note: There are 39 Intakes with an unknown offense class that are not included in this table.

Table F-5
Probation Intake Age 16-17 Intakes Opened by Sex and County, October 2019 - March 2020

	Male	Female	Not Reported	Total
NYS Total	**2,816**	**849**	**25**	**3,690**
NYC Total	**1,627**	**351**	**10**	**1,988**
ROS Total	**1,189**	**498**	**15**	**1,702**
Albany	79	50	0	129
Allegany	5	0	1	6
Broome	44	16	0	60
Cattaraugus	9	6	1	16
Cayuga	9	4	1	14
Chautauqua	27	12	0	39
Chemung	5	5	0	10
Chenango	12	1	0	13
Clinton	3	2	0	5
Columbia	6	2	0	8
Cortland	8	2	1	11
Delaware	5	1	0	6
Dutchess	29	12	0	41
Erie	115	89	2	206
Essex	3	0	0	3
Franklin	8	2	1	11
Fulton	8	1	0	9
Genesee	7	0	0	7
Greene	1	0	0	1
Hamilton	1	0	0	1
Herkimer	5	1	0	6
Jefferson	29	5	0	34
Lewis	3	0	0	3
Livingston	9	6	0	15
Madison	8	4	0	12
Monroe	64	19	0	83
Montgomery	2	1	0	3
Nassau	107	48	0	155

	Male	Female	Not Reported	Total
ROS Continued				
Niagara	30	27	0	57
Oneida	30	12	0	42
Onondaga	40	22	0	62
Ontario	9	5	0	14
Orange	39	15	0	54
Orleans	10	1	0	11
Oswego	15	5	0	20
Otsego	9	2	0	11
Putnam	7	5	0	12
Rensselaer	16	13	1	30
Rockland	8	3	0	11
St Lawrence	13	0	3	16
Saratoga	21	7	0	28
Schenectady	36	8	0	44
Schoharie	6	0	0	6
Schuyler	1	2	0	3
Seneca	12	1	0	13
Steuben	8	3	0	11
Suffolk	62	16	0	78
Sullivan	10	4	1	15
Tioga	7	0	0	7
Tompkins	10	8	0	18
Ulster	16	9	0	25
Warren	4	1	0	5
Washington	0	0	0	0
Wayne	12	4	0	16
Westchester	141	34	3	178
Wyoming	2	2	0	4
Yates	4	0	0	4

Source: DCJS, Caseload Explorer Database (as of 04/14/2020).

Appendix G – Family Court Petitions Filed (Tables G-1 – G-5)

Table G-1

Family Court Age 16-17 JD Petitions Filed by Offense Class and County, October 2019 – March 2020

	Felony			Misdemeanor			Total
	16	17	Total	16	17	Total	
NYS	**424**	**261**	**685**	**404**	**236**	**640**	**1,325**
NYC	**156**	**99**	**255**	**77**	**62**	**139**	**394**
Bronx	47	23	70	20	14	34	104
Kings	34	40	74	25	21	46	120
New York	39	16	55	6	10	16	71
Queens	33	19	52	24	15	39	91
Richmond	3	1	4	2	2	4	8
ROS	**268**	**162**	**430**	**327**	**174**	**501**	**931**
Albany	19	10	29	17	2	19	48
Allegany	2	0	2	3	1	4	6
Broome	0	0	0	8	0	8	8
Cattaraugus	6	1	7	3	4	7	14
Cayuga	1	2	3	3	2	5	8
Chautauqua	1	1	2	8	2	10	12
Chemung	8	4	12	1	5	6	18
Chenango	0	0	0	1	0	1	1
Clinton	0	0	0	0	0	0	0
Columbia	4	1	5	1	0	1	6
Cortland	0	0	0	3	1	4	4
Delaware	0	0	0	0	0	0	0
Dutchess	6	4	10	14	3	17	27
Erie	34	27	61	53	31	84	145
Essex	0	1	1	2	1	3	4
Franklin	0	0	0	2	1	3	3
Fulton	1	0	1	0	2	2	3
Genesee	1	1	2	5	2	7	9
Greene	0	1	1	0	0	0	1
Hamilton	0	0	0	0	0	0	0
Herkimer	0	0	0	0	0	0	0
Jefferson	4	2	6	1	9	10	16
Lewis	0	0	0	2	0	2	2
Livingston	3	0	3	3	1	4	7
Madison	0	0	0	0	0	0	0
Monroe	9	3	12	9	8	17	29
Montgomery	2	1	3	0	0	0	3
Nassau	36	35	71	17	15	32	103
Niagara	2	3	5	4	1	5	10
Oneida	6	2	8	6	2	8	16
Onondaga	36	14	50	57	21	78	128
Ontario	0	0	0	5	2	7	7
Orange	6	1	7	14	6	20	27
Orleans	7	0	7	0	0	0	7
Oswego	1	0	1	3	0	3	4

Table G-1, Cont'd
Family Court Age 16-17 JD Petitions Filed by Offense Class and County, October 2019 – March 2020

	Felony			Misdemeanor			Total
	16	17	Total	16	17	Total	
ROS Continued							
Otsego	3	4	7	1	0	1	8
Putnam	3	1	4	0	0	0	4
Rensselaer	9	3	12	10	5	15	27
Rockland	10	2	12	3	2	5	17
St. Lawrence	2	0	2	0	0	0	2
Saratoga	3	2	5	5	3	8	13
Schenectady	4	8	12	3	2	5	17
Schoharie	0	0	0	0	0	0	0
Schuyler	2	1	3	1	0	1	4
Seneca	0	0	0	0	1	1	1
Steuben	1	0	1	1	5	6	7
Suffolk	25	12	37	23	14	37	74
Sullivan	0	0	0	2	0	2	2
Tioga	1	0	1	0	1	1	2
Tompkins	1	3	4	7	2	9	13
Ulster	0	2	2	1	6	7	9
Warren	0	0	0	1	0	1	1
Washington	1	2	3	3	2	5	8
Wayne	0	0	0	1	0	1	1
Westchester	8	8	16	18	9	27	43
Wyoming	0	0	0	0	0	0	0
Yates	0	0	0	2	0	2	2

Source: DCJS-OCA Family Court Database (as of 04/15/2020).

Table G-2
NYS Family Court Age 16-17 JD Petitions Filed by Offense Class and Race-Ethnicity
NYC
October 2019 – March 2020

	Felony		Misdemeanor		Total	
	#	%	#	%	#	%
White	5	2%	4	3%	9	2%
Black	162	64%	84	60%	246	62%
Hispanic	69	27%	36	26%	105	27%
Other	9	4%	7	5%	16	4%
Unknown	10	4%	8	6%	18	5%
Total	255	100%	139	100%	394	100%

ROS
October 2019 – March 2020

	Felony		Misdemeanor		Total	
	#	%	#	%	#	%
White	139	32%	184	37%	323	35%
Black	188	44%	212	42%	400	43%
Hispanic	47	11%	60	12%	107	11%
Other	17	4%	13	3%	30	3%
Unknown	39	9%	32	6%	71	8%
Total	430	100%	501	100%	931	100%

Source: DCJS-OCA Family Court Database (as of 04/15/2020).

Tables G-3
Family Court Age 16-17 JD Petitions Filed by County and Race-Ethnicity,
October 2019 – March 2020

	White	Black	Hispanic	Other/Unknown	Total
NYS	**332**	**646**	**212**	**135**	**1,325**
NYC	**9**	**246**	**105**	**34**	**394**
Bronx	0	64	36	4	104
Kings	3	90	19	8	120
New York	0	44	25	2	71
Queens	6	44	24	17	91
Richmond	0	4	1	3	8
ROS	**323**	**400**	**107**	**101**	**931**
Albany	19	23	6	0	48
Allegany	6	0	0	0	6
Broome	3	3	0	2	8
Cattaraugus	9	4	1	0	14
Cayuga	6	1	1	0	8
Chautauqua	11	1	0	0	12
Chemung	4	2	1	11	18
Chenango	0	0	0	1	1
Clinton	0	0	0	0	0
Columbia	0	4	1	1	6
Cortland	3	0	0	1	4
Delaware	0	0	0	0	0
Dutchess	4	5	3	15	27
Erie	41	89	8	7	145
Essex	3	0	0	1	4
Franklin	2	0	0	1	3
Fulton	1	1	0	1	3
Genesee	7	1	0	1	9
Greene	0	0	0	1	1
Hamilton	0	0	0	0	0
Herkimer	0	0	0	0	0
Jefferson	13	3	0	0	16
Lewis	2	0	0	0	2
Livingston	6	1	0	0	7
Madison	0	0	0	0	0
Monroe	4	21	4	0	29
Montgomery	1	2	0	0	3
Nassau	29	28	18	28	103
Niagara	2	8	0	0	10
Oneida	5	6	5	0	16
Onondaga	21	88	17	2	128
Ontario	5	0	0	2	7
Orange	9	8	8	2	27
Orleans	7	0	0	0	7
Oswego	4	0	0	0	4

Tables G-3, Cont'd
Family Court Age 16-17 JD Petitions Filed by County and Race-Ethnicity,
October 2019 – March 2020

	White	Black	Hispanic	Other/Unknown	Total
ROS Continued					
Otsego	5	2	1	0	8
Putnam	1	0	3	0	4
Rensselaer	17	7	2	1	27
Rockland	1	9	5	2	17
St. Lawrence	2	0	0	0	2
Saratoga	6	2	1	4	13
Schenectady	9	7	1	0	17
Schoharie	0	0	0	0	0
Schuyler	3	0	0	1	4
Seneca	0	0	1	0	1
Steuben	5	2	0	0	7
Suffolk	22	40	9	3	74
Sullivan	2	0	0	0	2
Tioga	2	0	0	0	2
Tompkins	7	4	0	2	13
Ulster	2	5	1	1	9
Warren	1	0	0	0	1
Washington	4	4	0	0	8
Wayne	1	0	0	0	1
Westchester	6	19	9	9	43
Wyoming	0	0	0	0	0
Yates	0	0	1	1	2

Source: DCJS-OCA Family Court Database (as of 04/15/2020).

Table G-4
NYS Family Court Age 16-17 JD Petitions Filed by Offense Class and Sex
NYC
October 2019 – March 2020

	Felony		Misdemeanor		Total	
	#	%	#	%	#	%
Male	214	84%	113	81%	327	83%
Female	40	16%	24	17%	64	16%
Unknown	1	0%	2	1%	3	1%
Total	255	100%	139	100%	394	100%

ROS
October 2019 – March 2020

	Felony		Misdemeanor		Total	
	#	%	#	%	#	%
Male	354	82%	362	72%	716	77%
Female	76	18%	139	28%	215	23%
Unknown	0	0%	0	0%	0	0%
Total	430	100%	501	100%	931	100%

Source: DCJS-OCA Family Court Database (as of 04/15/2020).

Table G-5
Family Court Age 16-17 JD Petitions Filed by County and Sex,
October 2019 - March 2020

	Male	Female	Unknown	Total
NYS	**1,043**	**279**	**3**	**1,325**
NYC	**327**	**64**	**3**	**394**
Bronx	91	13	0	104
Kings	102	18	0	120
New York	50	21	0	71
Queens	76	12	3	91
Richmond	8	0	0	8
ROS	**716**	**215**	**0**	**931**
Albany	39	9	0	48
Allegany	5	1	0	6
Broome	8	0	0	8
Cattaraugus	10	4	0	14
Cayuga	7	1	0	8
Chautauqua	6	6	0	12
Chemung	13	5	0	18
Chenango	1	0	0	1
Clinton	0	0	0	0
Columbia	6	0	0	6
Cortland	4	0	0	4
Delaware	0	0	0	0
Dutchess	21	6	0	27
Erie	101	44	0	145
Essex	4	0	0	4
Franklin	3	0	0	3
Fulton	2	1	0	3
Genesee	8	1	0	9
Greene	1	0	0	1
Hamilton	0	0	0	0
Herkimer	0	0	0	0
Jefferson	13	3	0	16
Lewis	2	0	0	2
Livingston	5	2	0	7
Madison	0	0	0	0

	Male	Female	Unknown	Total
ROS Continued				
Monroe	25	4	0	29
Montgomery	3	0	0	3
Nassau	80	23	0	103
Niagara	8	2	0	10
Oneida	13	3	0	16
Onondaga	86	42	0	128
Ontario	6	1	0	7
Orange	22	5	0	27
Orleans	7	0	0	7
Oswego	2	2	0	4
Otsego	5	3	0	8
Putnam	3	1	0	4
Rensselaer	23	4	0	27
Rockland	13	4	0	17
St. Lawrence	2	0	0	2
Saratoga	12	1	0	13
Schenectady	17	0	0	17
Schoharie	0	0	0	0
Schuyler	3	1	0	4
Seneca	1	0	0	1
Steuben	4	3	0	7
Suffolk	57	17	0	74
Sullivan	0	2	0	2
Tioga	2	0	0	2
Tompkins	11	2	0	13
Ulster	8	1	0	9
Warren	1	0	0	1
Washington	4	4	0	8
Wayne	1	0	0	1
Westchester	36	7	0	43
Wyoming	0	0	0	0
Yates	2	0	0	2

Source: DCJS-OCA Family Court Database (as of 04/15/2020).

Appendix H – Detention Admissions (Tables H-1 – H-4)

AO Specialized Secure Detention (SSD) Admissions by County
October 2019 - March 2020

	Oct - Dec 2019		Jan - Mar 2020		Total
	16	17	16	17	
NYS Total	**89**	**133**	**58**	**102**	**382**
NYC Total	**43**	**50**	**20**	**45**	**158**
Bronx	9	14	4	15	42
Kings	13	15	5	14	47
New York	10	8	7	8	33
Queens	10	12	3	8	33
Richmond	1	1	1	0	3
ROS Total	**46**	**83**	**38**	**57**	**224**
Albany	2	5	1	1	9
Allegany	0	1	1	0	2
Broome	1	3	0	0	4
Cattaraugus	0	0	0	0	0
Cayuga	0	2	0	0	2
Chautauqua	0	0	0	0	0
Chemung	0	0	0	1	1
Chenango	0	0	0	0	0
Clinton	0	0	0	0	0
Columbia	0	0	0	0	0
Cortland	0	0	0	0	0
Delaware	0	0	0	0	0
Dutchess	0	0	0	2	2
Erie	7	13	9	10	39
Essex	0	0	0	0	0
Franklin	0	0	0	0	0
Fulton	0	0	0	0	0
Genesee	0	0	0	0	0
Greene	0	0	0	0	0
Hamilton	0	0	0	0	0
Herkimer	0	0	0	0	0
Jefferson	0	1	0	0	1
Lewis	0	0	0	0	0
Livingston	0	0	0	0	0
Madison	0	0	0	0	0

	Oct - Dec 2019		Jan - Mar 2020		Total
	16	17	16	17	
ROS Continued					
Monroe	3	12	5	10	30
Montgomery	0	0	0	0	0
Nassau	3	12	6	5	26
Niagara	0	2	0	1	3
Oneida	2	4	1	2	9
Onondaga	11	4	8	11	34
Ontario	0	1	0	0	1
Orange	0	0	1	1	2
Orleans	0	0	0	0	0
Oswego	0	0	0	0	0
Otsego	2	1	0	0	3
Putnam	1	0	0	0	1
Rensselaer	1	4	1	2	8
Rockland	0	0	1	2	3
St. Lawrence	0	0	0	0	0
Saratoga	0	1	0	0	1
Schenectady	0	0	0	1	1
Schoharie	0	0	0	0	0
Schuyler	0	0	0	0	0
Seneca	0	0	0	0	0
Steuben	0	0	0	0	0
Suffolk	5	9	1	2	17
Sullivan	0	0	0	0	0
Tioga	0	0	0	0	0
Tompkins	0	0	0	0	0
Ulster	0	0	0	0	0
Warren	0	0	0	0	0
Washington	0	0	0	0	0
Wayne	0	0	0	0	0
Westchester	8	8	3	6	25
Wyoming	0	0	0	0	0
Yates	0	0	0	0	0

Source: OCFS, Juvenile Detention Automated System (2019 data as of 3/9/2020, 2020 data as of 4/26/2020)

Note: Figures include pre- and post-sentence youth.

Table H-2
AO Specialized Secure Detention (SSD) Admissions
by Sex, Race/Ethnicity & Top Charge
October 2019 – March 2020

	NYC		ROS	
	#	%	#	%
Total SSD Admissions	**158**	**100%**	**224**	**100%**
Sex				
Male	149	94%	204	91%
Female	9	6%	20	9%
Race/Ethnicity				
Black	111	70%	127	57%
White	5	3%	28	13%
Hispanic	39	25%	61	27%
Other/Unknown	3	2%	8	4%
Top Charge				
Violent Felony Offense	138	87%	149	67%
Other Felony	15	9%	37	17%
Warrant	1	1%	9	4%
Violation of Probation	0	0%	2	1%
Other/Unknown	4	3%	27	12%

Source: OCFS, Juvenile Detention Automated System (2019 data as of 3/9/2020, 2020 data as of 4/26/2020)

Note: Figures include pre- and post-sentence youth.

Tables H-3
RTA JD Detention Admissions by County
October 2019 - March 2020

	Oct - Dec 2019		Jan - Mar 2020		Total
	16	17	16	17	
NYS Total	**115**	**82**	**106**	**89**	**392**
NYC Total	**31**	**46**	**43**	**38**	**158**
Bronx	10	14	19	12	55
Kings	9	10	10	11	40
New York	5	10	2	5	22
Queens	5	10	10	9	34
Richmond	2	2	2	1	7
ROS Total	**84**	**36**	**63**	**51**	**234**
Albany	4	1	3	2	10
Allegany	0	0	0	0	0
Broome	1	0	2	0	3
Cattaraugus	1	0	0	1	2
Cayuga	1	1	0	0	2
Chautauqua	1	0	1	0	2
Chemung	0	0	2	0	2
Chenango	0	0	0	0	0
Clinton	0	0	0	0	0
Columbia	0	0	0	0	0
Cortland	0	0	0	0	0
Delaware	0	0	0	0	0
Dutchess	3	1	0	1	5
Erie	17	5	6	6	34
Essex	0	0	0	0	0
Franklin	0	0	0	0	0
Fulton	0	0	1	0	1
Genesee	0	0	0	0	0
Greene	0	0	0	0	0
Hamilton	0	0	0	0	0
Herkimer	1	0	0	0	1
Jefferson	1	0	0	1	2
Lewis	0	0	0	0	0
Livingston	0	1	0	0	1
Madison	0	0	0	0	0

	Oct - Dec 2019		Jan - Mar 2020		Total
	16	17	16	17	
ROS Continued					
Monroe	2	0	4	4	10
Montgomery	0	1	1	1	3
Nassau	9	8	13	9	39
Niagara	0	0	2	1	3
Oneida	6	1	2	2	11
Onondaga	7	1	4	2	14
Ontario	0	0	2	0	2
Orange	0	0	1	1	2
Orleans	0	0	0	0	0
Oswego	0	0	0	0	0
Otsego	0	1	0	1	2
Putnam	0	0	1	0	1
Rensselaer	0	0	0	3	3
Rockland	0	0	1	1	2
St. Lawrence	0	0	0	0	0
Saratoga	1	0	0	0	1
Schenectady	1	2	4	4	11
Schoharie	0	0	0	0	0
Schuyler	1	0	0	0	1
Seneca	0	0	0	1	1
Steuben	0	1	0	2	3
Suffolk	14	9	5	4	32
Sullivan	3	0	0	0	3
Tioga	0	0	0	1	1
Tompkins	0	0	2	0	2
Ulster	0	0	0	0	0
Warren	0	0	0	0	0
Washington	0	0	0	0	0
Wayne	0	0	1	0	1
Westchester	9	3	5	3	20
Wyoming	0	0	0	0	0
Yates	1	0	0	0	1

Source: OCFS, Juvenile Detention Automated System (2019 data as of 3/9/2020, 2020 data as of 4/26/2020)

Table H-4
RTA JD Detention Admissions
by Sex, Race/Ethnicity & Top Charge
October 2019 – March 2020

	NYC		ROS	
	#	%	#	%
Total Admissions	**158**	**100%**	**234**	**100%**
Sex				
Male	121	77%	173	74%
Female	37	23%	61	26%
Race/Ethnicity				
Black	99	63%	123	53%
White	7	4%	63	27%
Hispanic	47	30%	38	16%
Other/Unknown	5	3%	10	4%
Top Charge				
Violent Felony Offense	13	8%	32	14%
Other Felony	6	4%	38	16%
Misdemeanor	117	74%	87	37%
Warrant	8	5%	47	20%
Violation of Probation	1	1%	22	9%
Other/Unknown	13	8%	8	3%

Source: OCFS, Juvenile Detention Automated System (2019 data as of 3/9/2020, 2020 data as of 4/26/2020)

Appendix I – JD Placement Admissions (Tables I-1 – I-2)

Table I-1
RTA JD Placement Admissions by County
October 2019 - March 2020

	Oct - Dec 2019		Jan - Mar 2020		Total
	16	17	16	17	
NYS Total	**33**	**2**	**44**	**19**	**98**
NYC Total	**5**	**0**	**7**	**2**	**14**
ROS Total	**28**	**2**	**37**	**17**	**84**
Albany	2	0	1	1	4
Allegany	0	0	0	0	0
Broome	0	0	0	0	0
Cattaraugus	0	0	0	0	0
Cayuga	0	0	1	0	1
Chautauqua	0	0	1	0	1
Chemung	0	0	1	0	1
Chenango	0	0	0	0	0
Clinton	0	0	1	0	1
Columbia	0	0	0	0	0
Cortland	0	0	0	0	0
Delaware	0	0	0	0	0
Dutchess	2	0	3	0	5
Erie	5	0	3	0	8
Essex	0	0	1	0	1
Franklin	0	0	1	0	1
Fulton	0	0	0	0	0
Genesee	0	0	1	0	1
Greene	0	0	1	0	1
Hamilton	0	0	0	0	0
Herkimer	0	0	0	0	0
Jefferson	0	0	0	0	0
Lewis	0	0	0	0	0
Livingston	0	0	0	0	0
Madison	0	0	0	0	0
Monroe	0	0	1	1	2
Montgomery	0	0	0	0	0
Nassau	5	0	2	2	9

	Oct - Dec 2019		Jan - Mar 2020		Total
	16	17	16	17	
ROS Continued					
Niagara	0	0	1	2	3
Oneida	1	0	2	2	5
Onondaga	5	0	3	1	9
Ontario	0	0	0	0	0
Orange	0	0	0	0	0
Orleans	0	0	0	0	0
Oswego	1	0	0	0	1
Otsego	0	0	0	1	1
Putnam	0	0	0	0	0
Rensselaer	0	0	2	0	2
Rockland	0	0	1	0	1
St. Lawrence	1	0	0	0	1
Saratoga	0	0	0	0	0
Schenectady	1	0	2	1	4
Schoharie	0	0	0	0	0
Schuyler	0	0	1	0	1
Seneca	0	0	0	0	0
Steuben	0	1	0	1	2
Suffolk	3	1	4	4	12
Sullivan	0	0	0	1	1
Tioga	0	0	0	0	0
Tompkins	0	0	0	0	0
Ulster	0	0	0	0	0
Warren	0	0	0	0	0
Washington	0	0	0	0	0
Wayne	0	0	0	0	0
Westchester	2	0	3	0	5
Wyoming	0	0	0	0	0
Yates	0	0	0	0	0

Source: OCFS, Juvenile Justice Information System and Connections (as of 5/4/2020).

Table I-2
RTA JD Placement Admissions
by Sex, Race/Ethnicity & Top Charge
October 2019 – March 2020

	NYC		ROS	
	#	%	#	%
Total Admissions	**14**	**100%**	**84**	**100%**
Sex				
Male	13	93%	67	80%
Female	1	7%	17	20%
Race/Ethnicity				
Black	8	57%	35	42%
White	1	7%	32	38%
Hispanic	5	36%	9	11%
Other/Unknown	0	0%	8	10%
Top Charge				
Felony	9	64%	22	26%
Misdemeanor	5	36%	19	23%
Violation of Probation*	0	0%	4	5%
Unknown	0	0%	39	46%

Source: OCFS, Juvenile Justice Information System and Connections (as of 5/4/2020)

*Admissions are identified as involving a 16-year-old offender if date of offense occurred after 10/01/2018 and the youth was 16 at the time of offense. For youth with a top charge of violation of probation (VOP), the date of the VOP is considered the date of offense and may therefore include youth whose disposition to probation occurred when the youth was less than 16 years of age.

Outcome Tables

Appendix J – Adolescent Offender Release Status (Tables J-1 – J-2)

Table J-1
Release Status at Arraignment by Race/Ethnicity

NYC
October 2018 - March 2020

	White		Black		Hispanic		Other	
	#	%	#	%	#	%	#	%
Total Arraignments	**57**	**100%**	**1,469**	**100%**	**617**	**100%**	**106**	**100%**
Released at Arraignment	**53**	**93%**	**1,125**	**77%**	**491**	**80%**	**97**	**92%**
Released on own Recognizance	48	84%	1,032	70%	465	75%	90	85%
Released Under Supervision/Non-Monetary Conditions	5	9%	85	6%	22	4%	4	4%
Bail Set and Posted at Arraignment	0	0%	8	1%	4	1%	3	3%
Not Released at Arraignment	**4**	**7%**	**292**	**20%**	**114**	**18%**	**7**	**7%**
Remanded Without Bail	0	0%	53	4%	13	2%	0	0%
Bail Set and Not Posted at Arraignment	4	7%	239	16%	101	16%	7	7%
Not Reported	**0**	**0%**	**52**	**4%**	**12**	**2%**	**2**	**2%**

ROS
October 2018 - March 2020

	White		Black		Hispanic		Other	
	#	%	#	%	#	%	#	%
Total Arraignments	**472**	**100%**	**624**	**100%**	**199**	**100%**	**28**	**100%**
Released at Arraignment	**334**	**71%**	**349**	**56%**	**132**	**66%**	**19**	**68%**
Released on own Recognizance	247	52%	242	39%	80	40%	11	39%
Released Under Supervision/Non-Monetary Conditions	87	18%	105	17%	48	24%	8	29%
Bail Set and Posted at Arraignment	0	0%	2	<1%	4	2%	0	0%
Not Released at Arraignment	**71**	**15%**	**220**	**35%**	**47**	**24%**	**9**	**32%**
Remanded Without Bail	30	6%	46	7%	17	9%	4	14%
Bail Set and Not Posted at Arraignment	41	9%	174	28%	30	15%	5	18%
Not Reported	**67**	**14%**	**55**	**9%**	**20**	**10%**	**0**	**0%**

Source: DCJS, Computerized Criminal History Database (as of 04/17/2020), OCA Extract File (as of 04/17/2020).

Table J-2
Release Status at Arraignment by Race/Ethnicity
NYC
October 2018 - March 2020

	Male		Female	
	#	%	#	%
Total Arraignments	**1,916**	**100%**	**333**	**100%**
Released at Arraignment	**1,475**	**77%**	**291**	**87%**
Released on own Recognizance	1,357	71%	278	83%
Released Under Supervision/Non-Monetary Conditions	104	5%	12	4%
Bail Set and Posted at Arraignment	14	1%	1	<1%
Not Released at Arraignment	**382**	**20%**	**35**	**11%**
Remanded Without Bail	61	3%	5	2%
Bail Set and Not Posted at Arraignment	321	17%	30	9%
Not Reported	**59**	**3%**	**7**	**2%**

ROS
October 2018 - March 2020

	Male		Female	
	#	%	#	%
Total Arraignments	**1,107**	**100%**	**216**	**100%**
Released at Arraignment	**680**	**61%**	**154**	**71%**
Released on own Recognizance	467	42%	113	52%
Released Under Supervision/Non-Monetary Conditions	207	19%	41	19%
Bail Set and Posted at Arraignment	6	1%	0	0%
Not Released at Arraignment	**318**	**29%**	**29**	**13%**
Remanded Without Bail	89	8%	8	4%
Bail Set and Not Posted at Arraignment	229	21%	21	10%
Not Reported	**109**	**10%**	**33**	**15%**

Source: DCJS, Computerized Criminal History Database (as of 04/17/2020), OCA Extract File (as of 04/17/2020).

Appendix K – Adolescent Offender Dispositions & Sentences (Tables K-1 – K-6)

Table K-1
Dispositions of AO Arrests by Race/Ethnicity

NYC

October 2018 - March 2020

	White		Black		Hispanic		Other	
	#	%	#	%	#	%	#	%
Total Dispositions	**60**	**100%**	**1,555**	**100%**	**662**	**100%**	**109**	**100%**
DA Declined to Prosecute	**13**	**22%**	**321**	**21%**	**148**	**22%**	**16**	**15%**
Removed to Family Court or Probation Intake	**47**	**78%**	**1,163**	**75%**	**484**	**73%**	**89**	**82%**
Disposed in Youth Part	**0**	**0%**	**71**	**5%**	**30**	**5%**	**4**	**4%**
Dismissed - Not ACD	0	0%	30	2%	19	3%	0	0%
Other Favorable or Non-Criminal Conviction	0	0%	25	2%	3	<1%	2	2%
Convicted of Felony	0	0%	15	1%	5	1%	2	2%
Convicted of Misdemeanor	0	0%	1	<1%	3	<1%	0	0%

ROS

October 2018 - March 2020

	White		Black		Hispanic		Other	
	#	%	#	%	#	%	#	%
Total Dispositions	**436**	**100%**	**588**	**100%**	**202**	**100%**	**29**	**100%**
DA Declined to Prosecute	**0**	**0%**	**0**	**0%**	**0**	**0%**	**0**	**0%**
Removed to Family Court or Probation Intake	**410**	**94%**	**516**	**88%**	**188**	**93%**	**26**	**90%**
Disposed in Youth Part	**26**	**6%**	**72**	**12%**	**14**	**7%**	**3**	**10%**
Dismissed - Not ACD	4	1%	21	4%	3	1%	1	3%
Other Favorable or Non-Criminal Conviction	4	1%	6	1%	3	1%	0	0%
Convicted of Felony	16	4%	41	7%	7	3%	2	7%
Convicted of Misdemeanor	2	<1%	4	1%	1	<1%	0	0%

Source: DCJS, Computerized Criminal History Database (as of 4/17/2020).

Table K-2
Dispositions of AO Arrests by Sex

NYC
October 2018 - March 2020

	Male		Female	
	#	%	#	%
Total Dispositions	**2,023**	**100%**	**363**	100%
DA Declined to Prosecute	**426**	**21%**	**72**	**20%**
Removed to Family Court or Probation	**1,504**	**74%**	**279**	**77%**
Disposed in Youth Part	**93**	**5%**	**12**	**3%**
Dismissed - Not ACD	43	2%	6	2%
Other Favorable or Non-Criminal Conviction	25	1%	5	1%
Convicted of Felony	22	1%	0	0%
Convicted of Misdemeanor	3	0%	1	0%

ROS
October 2018 - March 2020

	Male		Female	
	#	%	#	%
Total Dispositions	**1,033**	**100%**	**222**	**100%**
DA Declined to Prosecute	**0**	**0%**	**0**	**0%**
Removed to Family Court or Probation	**932**	**90%**	**208**	**94%**
Disposed in Youth Part	**101**	**10%**	**14**	**6%**
Dismissed - Not ACD	23	2%	6	3%
Other Favorable or Non-Criminal Conviction	11	1%	2	1%
Convicted of Felony	61	6%	5	2%
Convicted of Misdemeanor	6	1%	1	0%

Source: DCJS, Computerized Criminal History Database (as of 4/17/2020).

Table K-3
Sentences in Youth Part for Felony YO Adjudications and Adult Convictions by Race/Ethnicty

NYC

October 2018 - March 2020

	White		Black		Hispanic		Other	
	#	%	#	%	#	%	#	%
Total Felony Adjudications/Convictions	**0**	**0%**	**15**	**100%**	**5**	**100%**	**2**	**100%**
DOCCS Prison or AO Facility - 1+ Years	0	0%	8	53%	0	0%	**0**	**0%**
Specialized Secure Detention (SSD) - Up to 1 Year	0	0%	0	0%	2	40%	**0**	**0%**
Specialized Secure Detention (SSD) & Probation	0	0%	2	13%	0	0%	**2**	**100%**
Probation	0	0%	3	20%	0	0%	0	0%
Conditional Discharge	0	0%	2	13%	3	60%	0	0%

ROS

October 2018 - March 2020

	White		Black		Hispanic		Other	
	#	%	#	%	#	%	#	%
Total Felony Adjudications/Convictions	**16**	**100%**	**41**	**100%**	**7**	**100%**	**2**	**100%**
DOCCS Prison or AO Facility - 1+ Years	4	25%	13	32%	2	29%	**1**	**50%**
Specialized Secure Detention (SSD) - Up to 1 Year	0	0%	3	7%	1	14%	**0**	**0%**
Specialized Secure Detention (SSD) & Probation	4	25%	10	24%	1	14%	**1**	**50%**
Probation	8	50%	15	37%	3	43%	0	0%
Conditional Discharge	0	0%	0	0%	0	0%	0	0%

Source: DCJS, Computerized Criminal History Database (as of 4/17/2020).

Table K-4
Sentences in Youth Part for Felony YO Adjudications and Adult Convictions by Sex
NYC
October 2018 - March 2020

	Male		Female	
	#	%	#	%
Total Felony Adjudications/Convictions	**22**	**100%**	**0**	**0%**
DOCCS Prison or AO Facility - 1+ Years	8	36%	0	0%
Specialized Secure Detention (SSD) - Up to 1 Year	2	9%	0	0%
Specialized Secure Detention (SSD) & Probation	4	18%	0	0%
Probation	3	14%	0	0%
Other	5	23%	0	0%

ROS
October 2018 - March 2020

	Male		Female	
	#	%	#	%
Total Felony Adjudications/Convictions	**61**	**100%**	**5**	**100%**
DOCCS Prison or AO Facility - 1+ Years	18	30%	2	40%
Specialized Secure Detention (SSD) - Up to 1 Year	4	7%	0	0%
Specialized Secure Detention (SSD) & Probation	16	26%	0	0%
Probation	23	38%	3	60%
Other	0	0%	0	0%

Source: DCJS, Computerized Criminal History Database (as of 4/17/2020).

Table K-5
AO Removals from Youth Part to Family Court or Probation Intake by Race/Ethnicity

NYC
October 2018 - March 2020

	Violent				Non-Violent			
	White	Black	Hispanic	Other	White	Black	Hispanic	Other
Total Arraignments	31	971	418	49	23	452	173	51
Cases Removed	24	753	319	41	23	410	165	48
% Removed	77%	78%	76%	84%	100%	91%	95%	94%

ROS
October 2018 - March 2020

	Violent				Non-Violent			
	White	Black	Hispanic	Other	White	Black	Hispanic	Other
Total Arraignments	171	355	115	19	304	315	110	15
Cases Removed	133	241	90	12	277	275	98	14
% Removed	78%	68%	78%	63%	91%	87%	89%	93%

Source: DCJS, Computerized Criminal History Database (as of 4/17/2020).

Table K-6
AO Removals from Youth Part to Family Court or Probation Intake by Sex

NYC
October 2018 – March 2020

	Violent		Non-Violent	
	Male	Female	Male	Female
Total Arraignments	1,244	225	607	92
Cases Removed	945	192	559	87
% Removed	76%	85%	92%	95%

ROS
October 2018 – March 2020

	Violent		Non-Violent	
	Male	Female	Male	Female
Total Arraignments	562	98	610	134
Cases Removed	391	85	541	123
% Removed	70%	87%	89%	92%

Source: DCJS, Computerized Criminal History Database (as of 4/17/2020).

Appendix L – Juvenile Delinquent Intakes Closed (Tables L-1 – L-2)

Table L-1

NYC Probation Intakes Closed Age 16 & 17 by Offense Class & Race/Ethnicity

Closed October 2018 – March 2020

		White	Black	Hispanic	Other/ Unknown
Total	**Total Intakes Closed**	**119**	**2,093**	**1067**	**166**
	Referred Immediately	65	1,607	702	102
	Adjustment Terminated and Referred	8	119	68	11
	Adjusted	46	367	297	53
	Adjustment Rate	**39%**	**18%**	**28%**	**32%**
Felony	**Total Intakes Closed**	**58**	**1,166**	**519**	**88**
	Referred Immediately	36	974	378	61
	Adjustment Terminated and Referred	4	58	34	7
	Adjusted	18	134	107	20
	Adjustment Rate	**31%**	**11%**	**21%**	**23%**
Misdemeanor	**Total Intakes Closed**	61	**927**	**548**	**78**
	Referred Immediately	29	633	324	41
	Adjustment Terminated and Referred	4	61	34	4
	Adjusted	28	233	190	33
	Adjustment Rate	**46%**	**25%**	**35%**	**42%**

Note: 10 cases where offense class is unknown are not shown.

ROS Probation Intakes Closed Age 16 & 17 by Offense Class & Race/Ethnicity

Closed October 2018 – March 2020

		White	Black	Hispanic	Other/ Unknown
Total	**Total Intakes Closed**	**1,169**	**1,149**	**404**	**192**
	Referred Immediately	467	548	168	80
	Adjustment Terminated and Referred	123	136	54	16
	Adjusted	579	465	182	96
	Adjustment Rate	**50%**	**40%**	**45%**	**50%**
Felony	**Total Intakes Closed**	**247**	**280**	**95**	**43**
	Referred Immediately	135	175	51	24
	Adjustment Terminated and Referred	19	38	11	5
	Adjusted	93	67	33	14
	Adjustment Rate	**38%**	**24%**	**35%**	**33%**
Misdemeanor	**Total Intakes Closed**	**922**	**869**	**309**	**149**
	Referred Immediately	332	373	117	56
	Adjustment Terminated and Referred	104	98	43	11
	Adjusted	486	398	149	82
	Adjustment Rate	**53%**	**46%**	**48%**	**55%**

Note: 39 cases where offense class is unknown are not shown.

Source: DCJS, Caseload Explorer Database (as of 04/14/2020).

Table L-2
NYC Probation Intakes Closed Age 16 & 17 by Offense Class & Sex
Closed October 2018 – March 2020

		Male	Female	Other/ Unknown
Total	**Total Intakes Closed**	**2,818**	**615**	**12**
	Referred Immediately	2,028	437	11
	Adjustment Terminated and Referred	177	29	0
	Adjusted	613	149	1
	Adjustment Rate	**22%**	**24%**	**8%**
Felony	**Total Intakes Closed**	**1,534**	**290**	**7**
	Referred Immediately	1,209	233	7
	Adjustment Terminated and Referred	95	8	0
	Adjusted	230	49	0
	Adjustment Rate	**15%**	**17%**	**0%**
Misdemeanor	**Total Intakes Closed**	**1,284**	**325**	**5**
	Referred Immediately	819	204	4
	Adjustment Terminated and Referred	82	21	0
	Adjusted	383	100	1
	Adjustment Rate	**30%**	**31%**	**20%**

Note: 10 cases where offense class is unknown are not shown.

ROS Probation Intakes Closed Age 16 & 17 by Offense Class & Sex
Closed October 2018 – March 2020

		Male	Female	Other/ Unknown
Total	**Total Intakes Closed**	**2,047**	**848**	**19**
	Referred Immediately	958	299	6
	Adjustment Terminated and Referred	244	84	1
	Adjusted	845	465	12
	Adjustment Rate	**41%**	**55%**	**63%**
Felony	**Total Intakes Closed**	**552**	**113**	**0**
	Referred Immediately	331	54	0
	Adjustment Terminated and Referred	58	15	0
	Adjusted	163	44	0
	Adjustment Rate	**30%**	**39%**	**0%**
Misdemeanor	**Total Intakes Closed**	**1,495**	**735**	**19**
	Referred Immediately	627	245	6
	Adjustment Terminated and Referred	186	69	1
	Adjusted	682	421	12
	Adjustment Rate	**46%**	**57%**	**63%**

Note: 39 cases where offense class is unknown are not shown.
Source: DCJS, Caseload Explorer Database (as of 04/14/2020).

Appendix M – Family Court Petitions Disposed (Tables M-1 – M-2)

Table M-1

NYC Family Court Age 16 and 17 JD Petitions Disposed by Petition Class Category, Disposition Type, and Race/Ethnicity, October 2018-March 2020

		White		Black		Hispanic		Other/Unknown	
		#	%	#	%	#	%	#	%
Total	**Total Petitions Disposed**	**10**	**100%**	**355**	**100%**	**160**	**100%**	**28**	**100%**
	JD Findings	**6**	**60%**	**134**	**38%**	**58**	**36%**	**5**	**18%**
	Placement	3	30%	40	11%	12	8%	2	7%
	Probation	3	30%	73	21%	33	21%	3	11%
	Conditional Discharge	0	0%	21	6%	13	8%	0	0%
	ACD	**1**	**10%**	**76**	**21%**	**32**	**20%**	**11**	**39%**
	Dismissal/No Finding	**3**	**30%**	**145**	**41%**	**70**	**44%**	**12**	**43%**
Felony	**Total Petitions Disposed**	**2**	**100%**	**185**	**100%**	**80**	**100%**	**15**	**100%**
	JD Findings	**2**	**100%**	**100**	**54%**	**45**	**56%**	**5**	**33%**
	Placement	0	0%	37	20%	10	13%	2	13%
	Probation	2	100%	52	28%	25	31%	3	20%
	Conditional Discharge	0	0%	11	6%	10	13%	0	0%
	ACD	**0**	**0%**	**25**	**14%**	**10**	**13%**	**6**	**40%**
	Dismissal/No Finding	**0**	**0%**	**60**	**32%**	**25**	**31%**	**4**	**27%**
Misdemeanor	**Total Petitions Disposed**	**8**	**100%**	**170**	**100%**	**80**	**100%**	**13**	**100%**
	JD Findings	**4**	**50%**	**34**	**20%**	**13**	**16%**	**0**	**0%**
	Placement	3	38%	3	2%	2	3%	0	0%
	Probation	1	13%	21	12%	8	10%	0	0%
	Conditional Discharge	0	0%	10	6%	3	4%	0	0%
	ACD	**1**	**13%**	**51**	**30%**	**22**	**28%**	**5**	**38%**
	Dismissal/No Finding	**3**	**38%**	**85**	**50%**	**45**	**56%**	**8**	**62%**

Table M-1, Cont'd

ROS Family Court Age 16 and 17 JD Petitions Disposed by Petition Class Category, Disposition Type, and Race/Ethnicity, October 2018-March 2020

		White		Black		Hispanic		Other/Unknown	
		#	%	#	%	#	%	#	%
Total	**Total Petitions Disposed**	**526**	**100%**	**593**	**100%**	**161**	**100%**	**75**	**100%**
	JD Findings	**206**	**39%**	**242**	**41%**	**65**	**40%**	**29**	**39%**
	Placement	64	12%	82	14%	25	16%	11	15%
	Probation	106	20%	121	20%	29	18%	15	20%
	Conditional Discharge	36	7%	39	7%	11	7%	3	4%
	ACD	**156**	**30%**	**161**	**27%**	**34**	**21%**	**16**	**21%**
	Dismissal/No Finding	**164**	**31%**	**190**	**32%**	**62**	**39%**	**30**	**40%**
Felony	**Total Petitions Disposed**	**214**	**100%**	**269**	**100%**	**55**	**100%**	**34**	**100%**
	JD Findings	**91**	**43%**	**136**	**51%**	**26**	**47%**	**14**	**41%**
	Placement	34	16%	46	17%	12	22%	5	15%
	Probation	44	21%	70	26%	9	16%	8	24%
	Conditional Discharge	13	6%	20	7%	5	9%	1	3%
	ACD	**58**	**27%**	**54**	**20%**	**7**	**13%**	**7**	**21%**
	Dismissal/No Finding	**65**	**30%**	**79**	**29%**	**22**	**40%**	**13**	**38%**
Misdemeanor	**Total Petitions Disposed**	**312**	**100%**	**324**	**100%**	**106**	**100%**	**41**	**100%**
	JD Findings	**115**	**37%**	**106**	**33%**	**39**	**37%**	**15**	**37%**
	Placement	30	10%	36	11%	13	12%	6	15%
	Probation	62	20%	51	16%	20	19%	7	17%
	Conditional Discharge	23	7%	19	6%	6	6%	2	5%
	ACD	**98**	**31%**	**107**	**33%**	**27**	**25%**	**9**	**22%**
	Dismissal/No Finding	**99**	**32%**	**111**	**34%**	**40**	**38%**	**17**	**41%**

Source: DCJS-OCA Family Court Database (as of 04/15/2020).

Table M-2
NYC Family Court Age 16 and 17 JD Petitions Disposed by Petition Class Category, Disposition Type, and Sex, October 2018-March 2020

		Male		Female		Unknown	
		#	%	#	%	#	%
Total	**Total Petitions Disposed**	**450**	**100%**	**100**	**100%**	**3**	**100%**
	JD Findings	**183**	**41%**	**19**	**19%**	**1**	**33%**
	Placement	55	12%	2	2%	0	0%
	Probation	99	22%	13	13%	0	0%
	Conditional Discharge	29	6%	4	4%	1	33%
	ACD	**88**	**20%**	**32**	**32%**	**0**	**0%**
	Dismissal/No Finding	**179**	**40%**	**49**	**49%**	**2**	**67%**
Felony	**Total Petitions Disposed**	**233**	**100%**	**48**	**100%**	**1**	**100%**
	JD Findings	**135**	**58%**	**16**	**33%**	**1**	**100%**
	Placement	47	20%	2	4%	0	0%
	Probation	71	30%	11	23%	0	0%
	Conditional Discharge	17	7%	3	6%	1	100%
	ACD	**27**	**12%**	**14**	**29%**	**0**	**0%**
	Dismissal/No Finding	**71**	**30%**	**18**	**38%**	**0**	**0%**
Misdemeanor	**Total Petitions Disposed**	**217**	**100%**	**52**	**100%**	**2**	**100%**
	JD Findings	**48**	**22%**	**3**	**6%**	**0**	**0%**
	Placement	8	4%	0	0%	0	0%
	Probation	28	13%	2	4%	0	0%
	Conditional Discharge	12	6%	1	2%	0	0%
	ACD	**61**	**28%**	**18**	**35%**	**0**	**0%**
	Dismissal/No Finding	**108**	**50%**	**31**	**60%**	**2**	**100%**

Table M-2, Cont'd
ROS Family Court Age 16 and 17 JD Petitions Disposed by Petition Class Category, Disposition Type, and Sex, October 2018-March 2020

		Male		Female		Unknown	
		#	%	#	%	#	%
Total	**Total Petitions Disposed**	**1,006**	**100%**	**344**	**100%**	**5**	**100%**
	JD Findings	**409**	**41%**	**132**	**38%**	**1**	**20%**
	Placement	139	14%	43	13%	0	0%
	Probation	201	20%	69	20%	1	20%
	Conditional Discharge	69	7%	20	6%	0	0%
	ACD	**259**	**26%**	**106**	**31%**	**2**	**40%**
	Dismissal/No Finding	**338**	**34%**	**106**	**31%**	**2**	**40%**
Felony	**Total Petitions Disposed**	**466**	**100%**	**106**	**100%**	**0**	**0%**
	JD Findings	**215**	**46%**	**52**	**49%**	**0**	**0%**
	Placement	79	17%	18	17%	0	0%
	Probation	102	22%	29	27%	0	0%
	Conditional Discharge	34	7%	5	5%	0	0%
	ACD	**98**	**21%**	**28**	**26%**	**0**	**0%**
	Dismissal/No Finding	**153**	**33%**	**26**	**25%**	**0**	**0%**
Misdemeanor	**Total Petitions Disposed**	**540**	**100%**	**238**	**100%**	**5**	**100%**
	JD Findings	**194**	**36%**	**80**	**34%**	**1**	**20%**
	Placement	60	11%	25	11%	0	0%
	Probation	99	18%	40	17%	1	20%
	Conditional Discharge	35	6%	15	6%	0	0%
	ACD	**161**	**30%**	**78**	**33%**	**2**	**40%**
	Dismissal/No Finding	**185**	**34%**	**80**	**34%**	**2**	**40%**

Source: DCJS-OCA Family Court Database (as of 04/15/2020).

Appendix N – Youth Justice Data Resources

Arrests and Dispositions of Arrests

- Arrests by County and Region
  - Arrest counts for violent felony, non-violent felony, and misdemeanor offenses for youth younger than 18. Statewide, regional and county summaries of data are available.
- Dispositions of Arrests by County and Region
  - Dispositions of arrests involving 16- and 17-year-olds for felony and misdemeanor offenses. Statewide, regional and county summaries of data are available.

Juvenile Justice System Data

- County/Regional Juvenile Justice Profiles
  - Juvenile justice arrest and case processing activities for each of New York's 62 counties. Also includes data summaries for New York State, New York City and the Rest of the State (57 counties outside of New York City).
- Five Year Juvenile Justice Trend Tables by Processing Point and County
  - Key juvenile indicators by county for the most recent five years.
- Juvenile Justice Indicators Trend Tables
  - Key juvenile indicators for New York State, New York City and the Rest of the State (57 counties outside of New York City).

Detention and Placement Data

- Quarterly Detention Reports
  - Juvenile Justice Detention Monitoring Report includes data on detention admissions, average length of stay (ALOS), and average daily population (ADP), by case type and county.
  - Juvenile Justice Detention Stat Sheets provide detailed detention utilization data at several levels of aggregation, including statewide, region (i.e., New York City and Rest of State), and county.
  - Detention Facility Average Daily Population (ADP) Report provides ADP figures for each individual detention facility broken out by sex. Aggregate results are also provided by facility type and location.
- Quarterly Comprehensive Reports: Children in Care and Custody
  - Juvenile Justice Quarterly Reports provide a summary of juvenile justice involved youth under the care and custody of the Office of Children and Family Services (OCFS) for each quarter and contain a basic demographic profile of youth admitted and discharged during the quarter as well as in care on last day of the quarter.
  - Child Welfare Services Quarterly Reports provide a summary of youth served in a foster care setting for each quarter. These include children in Local Districts of Social Services (LDSS) custody as well as Office of Children and Family Services (OCFS) custody served in foster care settings. It contains a basic demographic profile of youth admitted and discharged during the quarter as well as in care on last day of the quarter.

credited towards the sentence imposed in the same manner and to the same extent applicable to inmates of state correctional facilities.

8. Whenever a juvenile offender or a juvenile offender adjudicated a youthful offender shall be delivered to the director of [a division for youth] an office of children and family services facility pursuant to a commitment to the [director of the division for youth] office of children and family services, the officer so delivering such person shall deliver to such facility director a certified copy of the sentence received by such officer from the clerk of the court by which such person shall have been sentenced, a copy of the report of the probation officer's investigation and report, any other pre-sentence memoranda filed with the court, a copy of the person's fingerprint records, a detailed summary of available medical records, psychiatric records and reports relating to assaults, or other violent acts, attempts at suicide or escape by the person while in the custody of a local detention facility.

9. Notwithstanding any provision of law, including section five hundred one-c of this article, the office of children and family services shall make records pertaining to a person convicted of a sex offense as defined in subdivision (p) of section 10.03 of the mental hygiene law available upon request to the commissioner of mental health or the commissioner of the office for people with developmental disabilities, as appropriate; a case review panel; and the attorney general; in accordance with the provisions of article ten of the mental hygiene law.

§ 82-a. Subdivision 2 of section 529 of the executive law, as amended by chapter 430 of the laws of 1991, is amended to read as follows:

2. Expenditures made by the [division for youth] office of children and family services for care, maintenance and supervision furnished youth, including alleged and adjudicated juvenile delinquents and persons in need of supervision, placed or referred, pursuant to titles two or three of this article, and juvenile offenders, youthful offenders and adolescent offenders committed pursuant to [section 70.05 of] the penal law, in the [division's] office's programs and facilities, shall be subject to reimbursement to the state by the social services district from which the youth was placed or by the social services district in which the juvenile offender resided at the time of commitment, in accordance with this section and the regulations of the [division] office, as follows: fifty percent of the amount expended for care, maintenance and supervision of local charges including juvenile offenders.

§ 82-b. Subdivision A of section 218-a of the county law is amended by adding a new paragraph 6 to read as follows:

6. Notwithstanding any other provision of law, commencing October first, two thousand eighteen, a county must provide for adequate detention of alleged or convicted adolescent offenders in a specialized secure detention facility for older youth who are alleged or convicted of committing an offense when they were sixteen years of age and commencing October first, two thousand nineteen, a county must provide for adequate detention of alleged or convicted adolescent offenders in a specialized secure detention facility for older youth who are alleged or convicted of committing an offense when they were sixteen or seventeen years of age. Such facility shall be certified and regulated by the office of children and family services in conjunction with the state commission of correction. Such facility shall: (i) have enhanced security features and specially trained staff; and (ii) be jointly administered by the agency of county government designated in accordance with subdivision A of this section and the applicable county sheriff, which

both shall have the power to perform all acts necessary to carry out their duties. The county sheriff shall be subject to the same laws that apply to the designated county agency regarding the protection and confidentiality of the information about the youth in such facility and shall prevent access thereto by, or the distribution thereof to, persons not authorized by law.

§ 83. Intentionally omitted.

§ 84. Intentionally omitted.

§ 85. Intentionally omitted.

§ 86. Intentionally omitted.

§ 87. Intentionally omitted.

§ 88. Intentionally omitted.

§ 89. Intentionally omitted.

§ 90. Intentionally omitted.

§ 91. Intentionally omitted.

§ 92. Intentionally omitted.

§ 93. Intentionally omitted.

§ 94. Intentionally omitted.

§ 95. Intentionally omitted.

§ 96. Intentionally omitted.

§ 97. Intentionally omitted.

§ 98. Intentionally omitted.

§ 98-a. Intentionally omitted.

§ 98-b. Intentionally omitted.

§ 98-c. Intentionally omitted.

§ 99. Subdivision 1, the opening paragraph of subdivision 2 and subparagraphs (i) and (iii) of paragraph (a) of subdivision 3 of section 529-b of the executive law, as added by section 3 of subpart B of part Q of chapter 58 of the laws of 2011, are amended to read as follows:

1. (a) Notwithstanding any provision of law to the contrary, eligible expenditures by an eligible municipality for services to divert youth at risk of, alleged to be, or adjudicated as juvenile delinquents or persons alleged or adjudicated to be in need of supervision, or youth alleged to be or convicted as juvenile offenders, youthful offenders or adolescent offenders from placement in detention or in residential care shall be subject to state reimbursement under the supervision and treatment services for juveniles program for up to sixty-two percent of the municipality's expenditures, subject to available appropriations and exclusive of any federal funds made available for such purposes, not to exceed the municipality's distribution under the supervision and treatment services for juveniles program.

(b) The state funds appropriated for the supervision and treatment services for juveniles program shall be distributed to eligible municipalities by the office of children and family services based on a plan developed by the office which may consider historical information regarding the number of youth seen at probation intake for an alleged act of delinquency, the number of youth remanded to detention, the number of juvenile delinquents placed with the office, the number of juvenile delinquents and persons in need of supervision placed in residential care with the municipality, the municipality's reduction in the use of detention and residential placements, and other factors as determined by the office. Such plan developed by the office shall be subject to the approval of the director of the budget. The office is authorized, in its discretion, to make advance distributions to a municipality in anticipation of state reimbursement.

As used in this section, the term "municipality" shall mean a county, or a city having a population of one million or more, and "supervision and treatment services for juveniles" shall mean community-based services or programs designed to safely maintain youth in the community pending a family court disposition or conviction in criminal court and services or programs provided to youth adjudicated as juvenile delinquents or persons in need of supervision, or youth alleged to be juvenile offenders, youthful offenders or adolescent offenders to prevent residential placement of such youth or a return to placement where such youth have been released to the community from residential placement. Supervision and treatment services for juveniles may include but are not limited to services or programs that:

(i) an analysis that identifies the neighborhoods or communities from which the greatest number of juvenile delinquents and persons in need of supervision are remanded to detention or residentially placed;

(iii) a description of how the services and programs proposed for funding will reduce the number of youth from the municipality who are detained and residentially or otherwise placed; how such services and programs are family-focused; and whether such services and programs are capable of being replicated across multiple sites;

§ 100. The opening paragraph and paragraph (a) of subdivision 2 and subdivisions 5 and 6 of section 530 of the executive law, the opening paragraph of subdivision 2 as amended by section 4 of subpart B of part Q of chapter 58 of the laws of 2011, paragraph (a) of subdivision 2 as amended by section 1 of part M of chapter 57 of the laws of 2012, subdivision 5 as amended by chapter 920 of the laws of 1982, subparagraphs 1, 2 and 4 of paragraph (a) and paragraph (b) of subdivision 5 as amended by section 5 of subpart B of part Q of chapter 58 of the laws of 2011, and subdivision 6 as amended by chapter 880 of the laws of 1976, are amended and a new subdivision 8 is added to read as follows:

Expenditures made by municipalities in providing care, maintenance and supervision to youth in detention facilities designated pursuant to sections seven hundred twenty and section 305.2 of the family court act and certified by [the division for youth] office of children and family services, shall be subject to reimbursement by the state, as follows:

(a) Notwithstanding any provision of law to the contrary, eligible expenditures by a municipality during a particular program year for the care, maintenance and supervision in foster care programs certified by the office of children and family services, certified or approved family boarding homes, and non-secure detention facilities certified by the office for those youth alleged to be persons in need of supervision or adjudicated persons in need of supervision held pending transfer to a facility upon placement; and in secure and non-secure detention facilities certified by the office in accordance with section five hundred three of this article for those youth alleged to be juvenile delinquents; adjudicated juvenile delinquents held pending transfer to a facility upon placement, and juvenile delinquents held at the request of the office of children and family services pending extension of placement hearings or release revocation hearings or while awaiting disposition of such hearings; and youth alleged to be or convicted as juvenile offenders, youthful offenders and adolescent offenders shall be subject to state reimbursement for up to fifty percent of the municipality's expenditures, exclusive of any federal funds made available for such purposes, not to exceed the municipality's distribution from funds that have been appropriated specifically therefor for that program year. Municipalities shall implement the use of detention risk assessment

instruments in a manner prescribed by the office so as to inform detention decisions. Notwithstanding any other provision of state law to the contrary, data necessary for completion of a detention risk assessment instrument may be shared among law enforcement, probation, courts, detention administrators, detention providers, and the attorney for the child upon retention or appointment; solely for the purpose of accurate completion of such risk assessment instrument, and a copy of the completed detention risk assessment instrument shall be made available to the applicable detention provider, the attorney for the child and the court.

5. (a) Except as provided in paragraph (b) of this subdivision, care, maintenance and supervision for the purpose of this section shall mean and include only:

(1) temporary care, maintenance and supervision provided to alleged juvenile delinquents and persons in need of supervision in detention facilities certified pursuant to sections seven hundred twenty and 305.2 of the family court act by the office of children and family services, pending adjudication of alleged delinquency or alleged need of supervision by the family court, or pending transfer to institutions to which committed or placed by such court or while awaiting disposition by such court after adjudication or held pursuant to a securing order of a criminal court if the person named therein as principal is under [sixteen] seventeen years of age; or[,]

(1-a) commencing on October first, two thousand nineteen, temporary care, maintenance, and supervision provided to alleged juvenile delinquents in detention facilities certified by the office of children and family services, pending adjudication of alleged delinquency by the family court, or pending transfer to institutions to which committed or placed by such court or while awaiting disposition by such court after adjudication or held pursuant to a securing order of a criminal court if the person named therein as principal is under twenty-one; or

(2) temporary care, maintenance and supervision provided juvenile delinquents in approved detention facilities at the request of the office of children and family services pending release revocation hearings or while awaiting disposition after such hearings; or

(3) temporary care, maintenance and supervision in approved detention facilities for youth held pursuant to the family court act or the interstate compact on juveniles, pending return to their place of residence or domicile[.]; or

(4) temporary care, maintenance and supervision provided youth detained in foster care facilities or certified or approved family boarding homes pursuant to article seven of the family court act.

(b) Payments made for reserved accommodations, whether or not in full time use, approved and certified by the office of children and family services and certified pursuant to sections seven hundred twenty and 305.2 of the family court act, in order to assure that adequate accommodations will be available for the immediate reception and proper care therein of youth for which detention costs are reimbursable pursuant to paragraph (a) of this subdivision, shall be reimbursed as expenditures for care, maintenance and supervision under the provisions of this section, provided the office shall have given its prior approval for reserving such accommodations.

6. The [director of the division for youth] office of children and family services may adopt, amend, or rescind all rules and regulations, subject to the approval of the director of the budget and certification

to the chairmen of the senate finance and assembly ways and means committees, necessary to carry out the provisions of this section.

8. Notwithstanding any law to the contrary, on or after January first, two thousand twenty, the state shall not reimburse for the cost of the detention of any person in need of supervision under article seven of the family court act.

§ 100-a. Section 153-k of the social services law is amended by adding a new subdivision 12 to read as follows:

12. Notwithstanding any law to the contrary, on or after January first, two thousand twenty, the state shall not reimburse for the cost of any placement of persons in need of supervision under article seven of the family court act.

§ 100-b. Intentionally omitted.

§ 101. The executive law is amended by adding a new section 259-p to read as follows:

§ 259-p. Interstate detention. (1) Notwithstanding any other provision of law, a defendant subject to section two hundred fifty-nine-mm of this article, may be detained as authorized by the interstate compact for adult offender supervision.

(2) A defendant shall be detained at a local correctional facility, except as otherwise provided in subdivision three of this section.

(3) (a) A defendant sixteen years of age or younger, who allegedly commits a criminal act or violation of his or her supervision on or after October first, two thousand eighteen or (b) a defendant seventeen years of age or younger who allegedly commits a criminal act or violation of his or her supervision on or after October first, two thousand nineteen, shall be detained in a juvenile detention facility.

§ 102. Subdivision 4 of section 246 of the executive law, as amended by section 10 of part D of chapter 56 of the laws of 2010, is amended to read as follows:

4. An approved plan and compliance with standards relating to the administration of probation services promulgated by the commissioner of the division of criminal justice services shall be a prerequisite to eligibility for state aid.

The commissioner of the division of criminal justice services may take into consideration granting additional state aid from an appropriation made for state aid for county probation services for counties or the city of New York when a county or the city of New York demonstrates that additional probation services were dedicated to intensive supervision programs[,] and intensive programs for sex offenders [or programs defined as juvenile risk intervention services]. The commissioner shall grant additional state aid from an appropriation dedicated to juvenile risk intervention services coordination by probation departments which shall include, but not be limited to, probation services performed under article three of the family court act. The administration of such additional grants shall be made according to rules and regulations promulgated by the commissioner of the division of criminal justice services. Each county and the city of New York shall certify the total amount collected pursuant to section two hundred fifty-seven-c of this chapter. The commissioner of the division of criminal justice services shall thereupon certify to the comptroller for payment by the state out of funds appropriated for that purpose, the amount to which the county or the city of New York shall be entitled under this section. The commissioner shall, subject to an appropriation made available for such purpose, establish and provide funding to probation departments for a continuum of evidence-based intervention services for youth alleged or

adjudicated juvenile delinquents pursuant to article three of the family court act or for eligible youth before or sentenced under the youth part in accordance with the criminal procedure law. Such additional state aid shall be made in an amount necessary to pay one hundred percent of the expenditures for evidence-based practices and juvenile risk and evidence-based intervention services provided to youth sixteen years of age or older when such services would not otherwise have been provided absent the provisions of a chapter of the laws of two thousand seventeen that increased the age of juvenile jurisdiction.

§ 103. The second undesignated paragraph of subdivision 4 of section 246 of the executive law, as added by chapter 479 of the laws of 1970, is amended to read as follows:

[The director shall thereupon certify to the comptroller for payment by the state out of funds appropriated for that purpose, the amount to which the county or the city of New York shall be entitled under this section.]

The commissioner of the division of criminal justice services may take into consideration granting additional state aid from an appropriation made for state aid for county probation services for counties or the city of New York when a county or the city of New York demonstrates that additional probation services were dedicated to intensive supervision programs and intensive programs for sex offenders. The commissioner shall grant additional state aid from an appropriation dedicated to juvenile risk intervention services coordination by probation departments which shall include, but not be limited to, probation services performed under article three of the family court act. The administration of such additional grants shall be made according to rules and regulations promulgated by the commissioner of the division of criminal justice services. Each county and the city of New York shall certify the total amount collected pursuant to section two hundred fifty-seven-c of this chapter. The commissioner of the division of criminal justice services shall thereupon certify to the comptroller for payment by the state out of funds appropriated for that purpose, the amount to which the county or the city of New York shall be entitled under this section. The commissioner shall, subject to an appropriation made available for such purpose, establish and provide funding to probation departments for a continuum of evidence-based intervention services for youth alleged or adjudicated juvenile delinquents pursuant to article three of the family court act or for eligible youth before or sentenced under the youth part in accordance with the criminal procedure law.

§ 104. The state finance law is amended by adding a new section 54-m to read as follows:

§ 54-m. Local share requirements associated with increasing the age of juvenile jurisdiction above fifteen years of age. Notwithstanding any other provision of law to the contrary, counties and the city of New York shall not be required to contribute a local share of eligible expenditures that would not have been incurred absent the provisions of a chapter of the laws of two thousand seventeen that added this section unless the most recent budget adopted by a county that is subject to the provisions of section three-c of the general municipal law exceeded the tax levy limit prescribed in such section or the local government is not subject to the provisions of section three-c of the general municipal law; provided, however, that the state budget director shall be authorized to waive any local share of expenditures associated with a chapter of the laws of two thousand seventeen that increased the age of juvenile jurisdiction above fifteen years of age, upon a showing of financial

hardship by a county or the city of New York upon application in the form and manner prescribed by the division of the budget. In evaluating an application for a financial hardship waiver, the budget director shall consider the incremental cost to the locality related to increasing the age of juvenile jurisdiction, changes in state or federal aid payments, and other extraordinary costs, including the occurrence of a disaster as defined in paragraph a of subdivision two of section twenty of the executive law, repair and maintenance of infrastructure, annual growth in tax receipts, including personal income, business and other taxes, prepayment of debt service and other expenses, or such other factors that the director may determine.

§ 104-a. Notwithstanding any other provision of law to the contrary, in accordance with the waiver provisions set forth in section 54-m of the state finance law, state funding shall be available for one hundred percent of a county's costs associated with transport of youth by the applicable county sheriff that would not otherwise have occurred absent the provisions of the chapter of the laws of two thousand seventeen that added this section.

§ 104-b. Notwithstanding any other provision of law; state reimbursement relating to the detention and placement of persons in need of supervision shall not be available for costs on or after January 1, 2020.

§ 104-c. 1. There shall be a "raise the age implementation task force," members of which will be assigned by the governor. Such task force will be responsible for reporting to the governor, the speaker of the assembly and the temporary president of the senate one year after the effective date of the chapter of the laws of 2017 that added this section. The task force shall have the following duties:

(A) monitoring the overall effectiveness of the law by reviewing the state's progress in implementing the major components;

(B) evaluating the effectiveness of the local adoption and adherence to the provisions of the law; and

(C) reviewing the sealing provisions including but not limited to an analysis of the number of applicants, the number of individuals granted sealing, and the overall effectiveness of the law's sealing requirements.

2. The task force members shall receive no remuneration for their services as members.

3. The task force may create such committees as it deems necessary.

4. The task force shall provide an initial report on their findings on or before August 1, 2019 with respect to the first phase of implementation and an additional report one year after with respect to the second phase of implementation.

§ 105. Severability. If any clause, sentence, paragraph, subdivision, section or part contained in any part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part contained in any part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 106. This act shall take effect immediately; provided that:

a. sections forty-eight and forty-eight-a of this act shall take effect on the one hundred eightieth day after this act shall have become

a law and shall be deemed to apply to offenses committed prior to, on, or after such effective date;

b. sections one through thirty, thirty-one-a, thirty-one-b, thirty-two, thirty-five, thirty-six, thirty-eight, forty-a, forty-one, forty-three, forty-four, fifty-six, fifty-six-a, fifty-six-b, fifty-seven, fifty-nine, sixty-one through sixty-three, sixty-five, sixty-seven, sixty-nine, seventy, seventy-two, seventy-five through seventy-eight, seventy-nine, seventy-nine-b, eighty, eighty-one-b, eighty-two-a, ninety-nine, one hundred, one hundred-a and one hundred one of this act shall take effect October 1, 2018; provided however, that when the applicability of such provisions are based on the conviction of a crime or an act committed by a person who was seventeen years of age at the time of such offense such provisions shall take effect October 1, 2019;

c. sections one hundred two and one hundred four shall take effect April 1, 2018;

d. the amendments to subdivision 4 of section 353.5 of the family court act made by section seventy-two of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 11 of subpart A of part G of chapter 57 of the laws of 2012, as amended, when upon such date the provisions of section seventy-three of this act shall take effect;

e. the amendments to the second undesignated paragraph of subdivision 4 of section 246 of the executive law made by section one hundred two of this act shall be subject to the expiration and reversion of such undesignated paragraph as provided in subdivision (aa) of section 427 of chapter 55 of the laws of 1992, as amended, when upon such date section one hundred three of this act shall take effect; provided, however if such date of reversion is prior to April 1, 2018, section one hundred three of this act shall take effect on April 1, 2018; and

f. the amendments to section 153-k of the social services law made by section one hundred-a of this act shall not effect the repeal of such section and shall be deemed to repeal therewith.

PART XXX

Section 1. The state comptroller is hereby authorized and directed to loan money in accordance with the provisions set forth in subdivision 5 of section 4 of the state finance law to the following funds and/or accounts:

1. Proprietary vocational school supervision account (20452).
2. Local government records management account (20501).
3. Child health plus program account (20810).
4. EPIC premium account (20818).
5. Education - New (20901).
6. VLT - Sound basic education fund (20904).
7. Sewage treatment program management and administration fund (21000).
8. Hazardous bulk storage account (21061).
9. Federal grants indirect cost recovery account (21065).
10. Low level radioactive waste account (21066).
11. Recreation account (21067).
12. Public safety recovery account (21077).
13. Environmental regulatory account (21081).
14. Natural resource account (21082).
15. Mined land reclamation program account (21084).
16. Great lakes restoration initiative account (21087).

McKinney's Consolidated Laws of New York Annotated
Family Court Act (Refs & Annos)
Article 10-a. Permanency Hearings for Children Placed Out of Their Homes

McKinney's **Family Court Act** § **1090-a**

§ **1090-a**. Participation of children in their permanency hearings

Effective: March 21, 2016
Currentness

(a)(1) As provided for in subdivision (d) of section one thousand eighty-nine of this article, the permanency hearing shall include an age appropriate consultation with the child.

(2) Except as otherwise provided for in this section, children age ten and over have the right to participate in their permanency hearings and a child may only waive such right following consultation with his or her attorney.

(3) Nothing in this section shall be deemed to limit the ability of a child under the age of ten years old from participating in his or her permanency hearing. Additionally, nothing herein shall be deemed to require an attorney for the child to make a motion to allow for such participation. The court shall have the discretion to determine the manner and extent to which any particular child under the age of ten may participate in his or her permanency hearing based on the best interests of the child.

(b)(1) A child age fourteen and older shall be permitted to participate in person in all or any portion of his or her permanency hearing in which he or she chooses to participate.

(2) For children who are at least ten years of age and less than fourteen years of age, the court may, on its own motion or upon the motion of the local social services district, limit the child's participation in any portion of a permanency hearing or limit the child's in person participation in any portion of a permanency hearing upon a finding that doing so would be in the best interests of the child. In making a determination pursuant to this paragraph the court shall consider the child's assertion of his or her right to participate and may also consider factors including, but not limited to, the impact that contact with other persons who may attend the permanency hearing would have on the child, the nature of the content anticipated to be discussed at the permanency hearing, whether attending the hearing would cause emotional detriment to the child, and the child's age and maturity level. If the court determines that limiting a child's in person participation is in his or her best interests, the court shall make alternative methods of participation available, which may include bifurcating the permanency hearing, participation by telephone or other available electronic means, or the issuance of a written statement to the court.

(c) Except as otherwise provided for in this section, a child who has chosen to participate in his or her permanency hearing shall choose the manner in which he or she shall participate, which may include participation in person, by telephone or available electronic means, or the issuance of a written statement to the court.

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(d)(1) For children who are age ten and over, the attorney for the child shall consult with the child regarding whether the child would like to assert his or her right to participate in the permanency hearing and if so, the extent and manner in which he or she would like to participate.

(2) The attorney for the child shall notify the attorneys for all parties and the court at least ten days in advance of the scheduled hearing whether or not the child is asserting his or her right to participate, and if so, the manner in which the child has chosen to participate.

(3)(i) The court shall grant an adjournment whenever necessary to accommodate the right of a child to participate in his or her permanency hearing in accordance with the provisions of this section.

(ii) Notwithstanding paragraph two of this subdivision, the failure of an attorney for the child to notify the court of the request of a child age ten or older to participate in his or her permanency hearing shall not be grounds to prevent such child from participating in his or her permanency hearing unless a finding to limit the child's participation is made in accordance with paragraph two of subdivision (b) of this section.

(4) Notwithstanding any other provision of law to the contrary, upon the consent of the attorney for the child, the court may proceed to conduct a permanency hearing if the attorney for the child has not conducted a meaningful consultation with the child regarding his or her participation in the permanency hearing if the court finds that:

(i) The child lacks the mental capacity to consult meaningfully with his or her attorney and cannot understand the nature and consequences of the permanency hearing as a result of a significant cognitive limitation as determined by a health or mental health professional or educational professional as part of a committee on special education and such limitation is documented in the court record or the permanency hearing report;

(ii) The attorney for the child has made diligent and repeated efforts to consult with the child and the child was either unresponsive, unreachable, or declined to consult with his or her attorney; provided, however that the failure of a foster parent or agency to cooperate in making the child reachable or available shall not be grounds to proceed without consulting with the child;

(iii) At the time consultation was attempted, the child was absent without leave from foster care; or

(iv) Demonstrative evidence that other good cause exists and cannot be alleviated in a timely manner.

(e) If an adjournment is granted pursuant to paragraph three of subdivision (d) of this section, the court may, upon its own motion or upon the motion of any party or the attorney for the child, make a finding that reasonable efforts have been made to effectuate the child's approved permanency plan as set forth in subparagraph (iii) of paragraph two of subdivision (d) of section one thousand eighty-nine of this article; such finding shall be made in a written order.

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(f) Nothing in this section shall contravene the requirements contained in subparagraph (ii) of paragraph one of subdivision (a) of section one thousand eighty-nine of this article that the permanency hearing be completed within thirty days of the scheduled date certain.

(g) Nothing in this section shall be construed to compel a child who does not wish to participate in his or her permanency hearing to do so.

Credits
(Added L.2016, c. 14, § 2, eff. March 21, 2016.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Prof. Merril Sobie

2019

A Section **1090**-**a** violation by the **Family Court** may not necessarily be appealable. In *Denise V.E.J. v. Westchester County Department of Social Services,* 163 A.D.3d 667, 82 N.Y.S.3d 140 (2d Dept. 2018), the child moved to participate in person at her permanency hearing. The court denied the motion and, instead, the child attended the hearing via video conferencing. At the hearing's conclusion, the court issued an order which was consistent with the child's position, as she articulated during the video conference. Holding that "... the child was not aggrieved by the dispositional order since she received the dispositional outcome that she was seeking at the permanency hearing ...", the Second Department dismissed the appeal.

2018

The older child has an absolute right to be present and participate at a permanency hearing (see the 2016 Practice Commentary to Section **1090**-**a**); hence the court cannot exclude the youngster, regardless of the circumstances. See, for example, *Matter of Denise V.E.J. (Latonia J.),* 163 A.D.3d 667, 82 N.Y.S.3d 140 (3d Dept. 2018), where the appellate court concluded that:

Where a dispositional order has been issued after a permanency hearing and a child was erroneously deprived of his or her statutory right to participate in person at that hearing, the remedy for such error would be to vacate the dispositional order, grant the motion to participate in person at the hearing, and remit the matter for a new permanency hearing at which the child must be permitted to participate in person (see generally **Family Court Act** § **1090**-**a**) [163 A.D.3d at 669]

Under Section **1090**-**a** the child may also waive her right to participate. When waived, may the court nevertheless order the child to be present? No, in accord with a Fourth Department decision; *Matter of Shawn S.,* 163 A.D.3d 31, 77 N.Y.S.3d 824 (4th Dept. 2018). The court cannot compel presence or, conversely, exclude

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presence. The decision is made solely by the older child. In *Shawn S.* the **Family Court** reviewed the circumstances and concluded that the child's interests would be best served by non-presence; See *Matter of Shawn S.*, 59 Misc.3d 277, 67 N.Y.S.3d 389 (Fam. Ct. Oswego Co. 2017). The decision was nevertheless reversed by the Fourth Department: "We therefore conclude that the court erred in ordering the subject child to be present at the permanency hearing." [163 A.D.3d at 32]

PRACTICE COMMENTARIES

by Prof. Merril Sobie

2016

Section 1089, in accordance with federal law, requires "age appropriate consultation with the child" in permanency hearings. The prescription, repeated at the outset of newly enacted Section **1090-a**, applies across-the-board to all permanency hearings and to all children, regardless of age. Section **1090-a**, informally known as the "kids-in-court" statute, details the circumstances and extent of the "age appropriate consultation" provision. The section outlines a three tiered approach geared to the age of the child as of the date of the hearing.

The first tier applies to children who are fourteen years of age or older. "A child age fourteen and older shall be permitted to participate in person at all or any portion of his or her permanency hearing in which he or she chooses to participate." [§ **1090-a**(b)(1)]. The right to participate is hence unequivocal. Waiver by the youngster is possible, but only following consultation with counsel [see subdivision (a)(1)(2)]. The manner of participation is likewise the child's decision, upon consultation with counsel [subdivision (d)(1)]. Ergo, the child may attend in person and participate in the courtroom, elect to participate by telephone or other electronic means, or request an out-of-court conference.

The next tier, in descending chronological age order, applies when the child is ten years or older, but less than 14. For those children, the provisions are more complex. Youths who are age 10 through 13 have an absolute right to participate. However, "... the court may, on its own motion or upon the motion of the local social services district, limit the child's in person participation in any portion of a permanency hearing upon a finding that doing so would be in the best interests of the child ..." [subdivision (b)(2)]. The criteria to determine the generalized "best interests" standard are spelled out in the subdivision. Upon determining that the child's in person participation should be limited, the court is obligated to make "alternative methods of participation available", such as bifurcating the hearing, telephone participation, or the child issuing a written statement to the court. The right to participate is therefore guaranteed, although the mode and extent of participation may be limited by the court. Any limitation imposed by the **Family Court** is of course subject to review by an appellate court.

For children less than ten years of age, Section **1090-a** commences with the broad statement: "Nothing in the section shall be deemed to limit the ability of a child under the age of ten years old from participating in his or her permanency hearing" (thereby implementing the federal directive, which is not age dependent) [subdivision (a)(3)]. However, the subdivision continues by stipulating that "The court shall have the discretion to determine the manner and extent to which any child under the age of ten may participate in his or her permanency hearing based on the best interests of the child". Participation at some level is hence required, but may be very limited. The mechanism

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for limiting the under ten year old's right to participate are not prescribed. However, the attorney for the child does not have to move for participation [subdivision (a)(3)]; that right is initially ensured. Presumably, it is incumbent upon the petitioning social services agency, the parents, the foster parents, or the court itself to move for a limitation.

The statute's presumption is that the AFC and the child will engage in “a meaningful consultation” as a prelude to a decision concerning participation (regardless of the child's age). Subdivision (4) lists the exceptions, which must be found by the court to justify the child's non-participation. In summary, the exceptions include situations in which the child lacks the mental capacity to consult meaningfully (presumably a lack of capacity will be documented by relevant evidence), or the child declines to consult, the child has absconded from foster care, or where “other good cause exists and cannot be alleviated in a timely manner.” Since any child above the age of ten will have received notice of the hearing pursuant to Section 1089, and the AFC will have received and may share the permanency report with the child, the materials upon which an intelligent discussion can be predicated should have been distributed at an earlier date.

One provision which may prove difficult to implement requires the AFC to notify the attorneys for all the parties and the court at least 10 days prior to the hearing as to whether the child is asserting his right to participate and, if so, the manner the child has chosen to participate [subdivision 2]. However, meaningful consultation between the attorney and the child may be impossible before the relevant permanency report is served (often less than 10 days prior to the hearing), the child has had an opportunity to receive and read the report, and a meeting with the attorney can be arranged. Given the time constraints, the requirement “... shall not be grounds to prevent such child from participating in his or her permanency hearing ...” The “saving clause” may be applied in more cases then the largely unworkable ten day notice provision.

Adjournments may of course be needed in light of the procedures delineated in Section **1090**-**a**. They are available, but only within the confines of the requirement that the hearing be completed within 30 days of the originally scheduled date. Neither the court nor the parties have much “wiggle room” in conducting permanency hearings.

The first reported Section **1090**-**a** case is *Matter of Denise J. (Latonia J.),* 52 Misc.3d 799, 32 N.Y.S.3d 876 (Fam. Court West. Co. 2016). Denise was 16 years old at the time of the hearing, and accordingly had an absolute right to attend in person. However, she had complex significant cognitive and behavioral problems. Further, she resided at a residential center in New Hampshire. In light of Section **1090**-**a**'s strict provision concerning children above the age of 14, the court denied an application to limit her participation and ordered that she be transported to New York for participation at the hearing. The court analogized the situation to a youth involved in a juvenile delinquency proceeding where presence is required regardless of the respondent's serious or even violent behavioral and mental issues. (Equally analogous may be cases involving the adult disturbed criminal defendant and civil commitment and guardianship proceedings.)

As the *Denise J.* decision notes, the right of a child to participate in a permanency hearing, in accord with the “age appropriate consultation” provision of Section 1089, pre-dates Section **1090**-**a**. The new section essentially clarifies the earlier provision and establishes procedures for its implementation. Thus the body of existing Section 1089 caselaw should be helpful to counsel and the court when applying Section **1090**-**a**. See the original Commentary at pages 216-217 and the supplementary section 1089 commentaries.

Last, permanency hearings constitute but one integral part of the array of child protective proceedings. The principle that children have the right to meaningful participation, including in-court presence, in proceedings which

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fundamentally affect their lives, is equally applicable across the board, from Article 10 preliminary hearings, through disposition, permanency hearings, and until the achievement of permanency. Several states permit the older child to be present at all phases of the child protective process, unless excluded for valid reason; see, e.g. Cal. Welf. & Inst. Code Section 349. Section **1090-a** may represent the initial initiative in accommodating New York's children's need to participate throughout the frequently elongated child protective judicial spectrum.

Relevant Additional Resources

Additional Resources listed below contain your search terms.

RESEARCH REFERENCES

Encyclopedias

29 N.Y. Jur. 2d Courts and Judges § 884, Concurrent Jurisdiction of Supreme Court With **Family Court** as Concerning Custody and Visitation of Minors.

Forms

10A Carmody-Wait 2d New York Practice with Forms § 70:345, Particular Cases Not Considered Moot--**Family Court** Cases.
18 Carmody-Wait 2d New York Practice with Forms § 111:62, Execution and Acknowledgment of Surrender Instrument Before **Family Court** Judge or Surrogate for Adoption of Child in Foster Care.
19D Carmody-Wait 2d New York Practice with Forms § 119A:684, Parental Rights Termination Proceedings that Must be Originated in **Family Court**.
27 Carmody-Wait 2d New York Practice with Forms § 155:9, Jurisdiction of Supreme Court and **Family Court**.

Treatises and Practice Aids

10 New York Practice, New York **Family Court** Practice § 2:69 (2d ed.), Presence of Child.
10 New York Practice, New York **Family Court** Practice § 2:108.50 (2d ed.), Permanency Hearings--Child's Right to Notice of Hearing and to Participate at Hearing.

Relevant Notes of Decisions (3)

View all 6

Notes of Decisions listed below contain your search terms.

Child's right to attend hearing

Although 16-year-old foster child with multiple complex needs had previously engaged in aggressive and dangerous behavior, she had right to participate in person at her permanency hearing pursuant to her request, under **Family Court Act** (FCA), despite objection by county department of social services that child could not be safely transported to hearing and would be unable to have meaningful consultation with her attorney or understand hearing, and guardian ad litem's objection that participation in hearing would not be in child's best interests, since attorney for child determined that child was capable of knowing, voluntary, and considered judgment, and that child's decision to participate in person was not likely to result in substantial risk of imminent serious harm to herself. In re Denise J., 2016, 52 Misc.3d 799, 32 N.Y.S.3d 876. Infants 2076

Requiring child to attend

Family court lacked the authority to compel child to be present at the permanency hearing following 14 year old child's waiver of right to participate; although under statute court could limit the participation of a child under the age of 14 based on the best interests of the child, court lacked authority to compel the participation of a child who waived his right to participate in a permanency hearing after consultation with his attorney. Matter of Shawn S. (4 Dept. 2018) 163 A.D.3d 31, 77 N.Y.S.3d 824. Infants 2076

Family Court could require 14-year-old foster child, who had several mental health concerns, to make personal appearance at his permanency planning hearings, despite child's objections to appearing, since foster child did not have absolute right under statute governing participation of children in their permanency hearings to waive his participation, and if **Family Court** was prevented from speaking with child, it would become impossible for it to measure his level of satisfaction or recognize undisclosed problems. Matter of Shawn S., 2017, 59 Misc.3d 277, 67 N.Y.S.3d 389, reversed 163 A.D.3d 31, 77 N.Y.S.3d 824. Infants 2294

McKinney's **Family Court Act** § **1090-a**, NY FAM CT § **1090-a**
Current through L.2022, chapters 1 to 579. Some statute sections may be more current, see credits for details.

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F.C.A. §1090-a (6/2016) **Form PH-4-b**

Docket #:_____ **(Notice to Child of Permanency Hearing Family**
Unit #:_____ **- Questions You May Have)**

To_____:

As a child in foster care, your case is heard by a Judge. This happens at least once every six months. This hearing is called a Permanency Hearing. You have a right to come if you would like.

The next Hearing on your case is set as follows:

DATE: **TIME:**
COURT: **ADDRESS:**
PART/JUDGE:

At the Hearing, the Judge will make decisions about:

- where you will live
- the plan the Caseworker has for you now and when you leave care
- what the Caseworker should be doing to help you
- what the Caseworker should be doing to help your family
- how your parents or other adults in your life should be helping with the plan

Questions You May Have:

Question: Can I come to the hearing?
Answer: Yes. If you are 10 or older, you have the right to be there. Even if you are younger, you can probably be there.

Question: Do I have to come?
Answer: No, you do not have to come. But you should speak with your lawyer about this decision. Your lawyer may be able to help with any problems that are keeping you from coming. Your lawyer's phone number is at the bottom of this form.

Question: Why should I go?
Answer: The Judge will be making decisions about you and your case. The Judge wants to hear from you if there is something you want the Judge to know. The Judge can answer your questions. If you don't go, your lawyer may speak on your behalf, but it would usually be better for you to be there too.

Question: If the date or time is not good for me, can it be changed?
Answer: Yes, tell your lawyer or your caseworker what the problem is. They may be able

to get the date or time changed. They can also help make sure you get to the hearing.

Question: Who else will be there?
Answer: The judge hearing your case. Depending on the case, many others may be there: Your parents and caregivers and their lawyers. Your brothers and sisters. Your caseworker from the agency. Your lawyer. Others who provide services to you and your family.

Question: Can I invite someone to come who is important to me? Answer:
Yes, this is your hearing.

Question: How will I get there?
Answer: Talk to your caseworker and your foster parents about this.

Question: If I don't want to come, can I be on the phone, Skype or video? Answer: Yes, talk to your lawyer about arranging this.

Question: If I don't want to come, can I write a letter to the judge? Answer: Yes, talk to your lawyer about this.

Question: What if I have more questions?
Answer: Talk to your lawyer about any other questions or concerns you have. The sooner, the better!

Your lawyer's contact information:
Name:
Phone number:

Your caseworker's contact information:
Name:
Phone number:

60th Anniversary of New York's Family Court: *The Expanding Concept of Family*

Amy Schwartz-Wallace, Esq.
Senior Attorney & Interim Co-Legal Director
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Empire Justice Center

Access to Orders of Protection & DV Programs

- A wide range of victims of domestic violence can access orders of protection in civil (family offense, divorce, other family court proceedings) or criminal court
  - Advances in marriage equality, relationship recognition, and 2008's significant expansion of "family and household members" in "intimate relationships" FCA § 812/CPL §530.11 increased access

- LGBTQ victims have the right to access residential and non-residential DV programs and to be treated with equal dignity/services without regard to gender identity or sexual orientation
  - *See also*: Social Services Law §459-a (DV program access), 18 NYCRR §§408.2 & 462.2 (DV program access regulation), 15-OCFS-ADM-23, Executive Law §296 (public accommodation discrimination in Human Rights Law), Violence Against Women Reauthorization Act of 2013 (P.L. 113-4)(anti-discrimination protections for VAWA-funded entities)

"Members of the Same Family or Household"

- "…[S]hall mean the following:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common regardless of whether such persons have been married or have lived together at any time; and

(e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".

A Closer Look at ....

Evolving Relationship Recognition and Respect

Why Is Relationship Recognition Law Critical To This Conversation?

- Understanding these relationships and will help courts fashion appropriate relief, help counsel/advocates share options
- Formalizing--or refusing to formalize--relationships may be a tool of domestic violence
- NY is close to or borders jurisdictions that do/did offer a variety of legal relationship statuses and NY residents may have travelled there to enter into state-sanctioned relationships
- LGBTQ families relocate to NY from other jurisdictions—with their state-sanctioned relationships in tow
  - Especially true in DV cases where victims flee to or from NY with regularity
- Policies, laws and case law surrounding relationship rights and recognition for LGBTQ people are *fast evolving* in NY (and elsewhere)
  - Abusive parties can and do exploit legal quagmires as a tool of domestic violence.
  - Abusive parties may rely upon and capitalize on systemic homo/biphobia, transphobia, and unhelpful law to avoid accountability, hoard resources, engage in retaliatory litigation, or punish the survivor

Legal Cases Often Arise in Context of Major Life Events

- **Times of crisis**
  - Health issues
  - Accident or death
  - Intimate partner violence
  - Eviction or other loss of housing
- **End of the relationship**
  - Divorce or dissolution
- **Issues Around Children**
  - Concerns around custody and visitation or parentage

Empire Justice Center

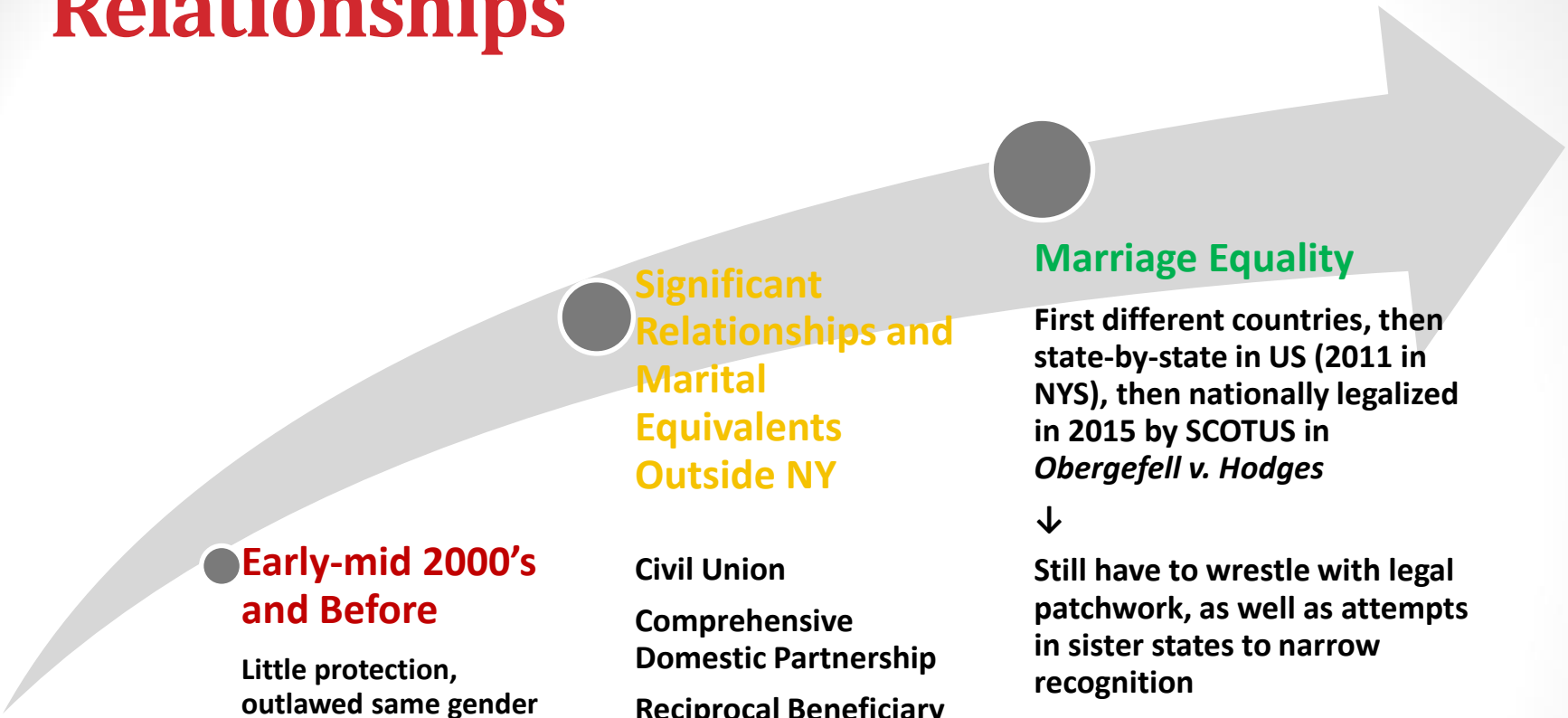
Implications of a Legal Patchwork for Families and DV Survivors

- **No uniform legal framework for analysis**
  - Legal questions create extra barriers, confusion, and even chaos for persons seeking to establish families, dissolve their relationships, safeguard financial interests, increase their personal safety, and protect their children.
  - Different cases, different results
  - Over-reliance on equity for relief (broad discretion of the court)
  - May warrant more seasoned counsel, more appeals

- **Allows abusive party to potentially "game the system" by:**
  - Forum shopping for unfriendly jurisdictions, including fleeing the state
  - Exploit unfavorable or evolving case law, laws, and policies
  - Avoid protecting spouses and children by exploiting lack of legal protections
  - Avoiding existing legal methods to protect (like adoption, agreements, etc.)

- **Allows a victim to make arguments and create legal barriers and roadblocks that would not exist for an opposing party who is straight or cisgender**.

A Recent History of LGBTQ Legal Relationships



Early-mid 2000's and Before

Little protection, outlawed same gender unions—or relationship perceived to be same gender

Contracts/Agreements

Adult adoption, Wills

*Registered Domestic Partnerships (local)

Selected rights and benefits under NY law

Significant Relationships and Marital Equivalents Outside NY

Civil Union

Comprehensive Domestic Partnership

Reciprocal Beneficiary

↓

NY had to wrestle with changes in sister states and other countries

Marriage Equality

First different countries, then state-by-state in US (2011 in NYS), then nationally legalized in 2015 by SCOTUS in *Obergefell v. Hodges*

↓

Still have to wrestle with legal patchwork, as well as attempts in sister states to narrow recognition

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Braschi v. Stahl Associates Co., 543 N.E.2d 49 (1989)

- Protection from eviction in rent-controlled housing—who is "family"?

…[W]e conclude that the term family, as used in 9 NYCRR 2204.6(d), should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or an adoption order. The intended protection against sudden eviction **should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life**. In the context of eviction, a more realistic, and certainly equally valid, view of a family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence. This view comports both with our society's traditional concept of "family" and with the expectations of individuals who live in such nuclear units [citation omitted].*emphasis added*

Marriage & Marital Equivalents

- **MARRIAGE: Confers all state-based marriage rights and benefits, without regard to gender**
  - Beginning July 24, 2011, New Yorkers had marriage equality [L.2011, Ch.95]
  - Available to couples in all US states (by state legislation, case law or US Supreme Court ruling in Obergefell v. Hodges, 135 S.Ct. 2584 [2015]) and certain tribal communities
    - **Growing in jurisdictions across the world**--Argentina, Belgium, Brazil, Canada, Denmark, France, Finland, Iceland, Ireland, Greenland, Netherlands, New Zealand, Norway, Portugal, Spain, South Africa, Sweden, Uruguay, parts of Mexico, Luxembourg, England/Wales, Scotland, *and more!!!*
- **CIVIL UNION: Confers *the same* rights and benefits to CU partners as in marriage, but generally regarded as an inferior legal status with evolving inter-state relationship recognition concerns**
  - Still available in a few US and foreign jurisdictions, but most states discontinued offering them during national fight for marriage equality
  - In some states, CUs previously created there were converted to marriages by operation of law or could be converted to marriages by the civil union spouses

Marriage & Marital Equivalents and Other Significant Legal Relationships

- **Domestic Partnerships and similar comprehensive statuses in other jurisdictions:**
  - May be a marital equivalent or provide an enumerated list of rights and benefits
  - Still available in: CA, OR, NV & DC (and WA but only if one party is over age 62)

- **Registered Domestic Partnerships in NY**
  - Local registries confer *very limited* legal status, rights, and protections
  - Does not confer access to spousal benefits or create a legal relationship with a child of the partnership
  - Employers and others may extend benefits to DPs, but these are waning
  - While need not be a registered DP, NY will provide certain rights and benefits: bereavement leave, health care decision-making, visitation at medical facilities, control of partner's remains, various September 11th Attack-related benefits, Crime Victims Board compensation; Credit Union membership. *See* Dickerson, *supra*, 73 AD3d at 54-55 for enumerated list.

Respect for Marriages & Marital Equivalents in NY

- **Marriage: No question that New York will respect marriages performed under the Marriage Equality Act.**
  - **Out-of state marriages are accorded similar respect in NY as a matter of comity per case law.** See both Martinez v. Monroe Community College [50 A.D.3d 189 (4th Dept. 2008), lv. to appeal denied 10 N.Y.3d 856 (2008)] and In re Estate of Ranftle, 81 A.D.3d 566, 917 (1st Dept 2011) reaffirmed longstanding marriage comity principles by declaring that same-sex marriages performed validly in other jurisdictions *must* be recognized in NY
  - **NY marriages must be respected by the federal government, as well as by other states.** See United States v. Windsor, 133 S.Ct. 2675 (2013) and Obergefell v. Hodges, 135 S.Ct. 2584 (2015).
- **Civil Unions & Domestic Partnerships: NY courts have recognized CU as a matter of comity, but the *full extent* of such recognition has not been fully determined yet.**
  - Debra H. v. Janice R., 4 N.Y.3d 576 (2010) (parentage); Dickerson v. Thompson, 73 A.D.3d 52 (3rd Dept. 2010); 88 A.D. 121 (3rd Dept. 2012)(dissolution); O'Reilly-Morshead v. O'Reilly-Morshead, 163 A.D.3d 1479 (4th Dept. 2018)(ED in dissolution); *See also* Kelly S v. Farah M. (*slide 20*)
    - *But see* Langan v. St. Vincent's Hospital, 25 A.D.3d 90 (2005) & Langan v. State Farm Fire & Casualty, 48 A.D.3d 76 (2007) (parties in CUs cannot be extended certain statutory rights reserved for married "spouses");

Marriage, Marriage Equivalents & Transgender Spouses

- If a transgender person entered into a valid marriage, civil union, or RDP *before gender-affirming,* no New York court has questioned the legal relationship's continued validity or otherwise invalidated
  - Since 2011's Marriage Equality Act, all couples could legally marry in NY without regard to their intended spouse's gender identity or expression
  - There has been no case law adjudicating this in NY since marriage equality in NY or since Windsor or Obergefell were decided
- Before marriage equality, for some couples married in NY *after one spouse's gender change,* some *older* case law considered that marriage void as a violation of previously existing prohibitions against "same-sex" marriage. Anonymous v. Anonymous, 67 Misc.2d 982 (1971); Frances B. v. Mark B., 78 Misc.2d 112 (1974); *see also* K.B. v. J.R., 26 Misc.3d 465 (2010) and Karin T. v. Michael T., 127 Misc.2d 14 (N.Y. Fam. Ct 1985) where void marriages negatively impacted parentage
- No published NY case law around civil unions or RDPs with regard to transgender spouses.

Multiple State-Sanctioned Relationships

- Given the evolving policy landscape over the last few decades, clients may have entered into one or more binding legal statuses in various jurisdictions (i.e. a NY domestic partnership in the 90's, civil union in mid-2000's, Canadian marriage, then a NY marriage).
- Confusing! Clients may state they are "married " or "single" but that should only be a starting point for questions!
  - Examine:
    - Nature of legal relationship; Where celebrated and when
    - Partner in that relationship (same or different)
    - Was it correctly dissolved? Ever dissolved?

No Governmentally-Created Legal Relationship

- To be sure, there may be challenges with relationship recognition where the parties formally entered into marriage, civil union, or domestic partnership

- Parties without these formal statuses have also faced relationship recognition hurdles

- Without a formal legal relationship, some parties may have undertaken other steps to safeguard their relationships, such as in contract with a partnership agreement, separation agreement, other contracts, deeds, wills, proxies, powers of attorney, etc…

- *In some long-term relationships, the parties were together for many years before entering into a legal marital status. Courts are turning to "marriage tacking" to determine maintenance and relief that is more equitable. See also DRL§236 (i.e. consideration of a pre-marital joint household and other equity factors)*

Parentage, Custody & Support Concerns

Ways to Become a Parent and/or Have Standing in Custody & Visitation Cases

- Biology
- Marriage, civil union, comprehensive domestic partnership
- Adoption (incl. second parent adoptions)
- Equitable estoppel: Pre-conception intent to conceive and raise a child together, by clear and convincing evidence.
- Equitable estoppel: Post-conception intent to raise a child together
- Judicial estoppel
- Extraordinary circumstances
- *Eff. February 2021: NY's Child Parent Security Act, L.2020, ch.56, Part L (incl. Judgments of Parentage)*

Parentage Derived from Marriage

- "It is the intent of the legislature that the marriages of same-sex and different-sex couples be treated equally in all respects under the law. The omission from this act of changes to other provisions of law shall not be construed as a legislative intent to preserve any legal distinction between same-sex couples and different-sex couples with respect to marriage. The legislature intends that all provisions of law which utilize gender-specific terms in reference to the parties to a marriage, or which in any other way may be inconsistent with this act, be construed in a gender-neutral manner or in any way necessary to effectuate the intent of this act." Marriage Equality Act, L.2011, Ch.95
- **Parentage derived from marriage:**
  - DRL § 24 (codified common law); DRL § 73 (child born to married woman via artificial insemination); FCA § 417 (child support jurisdiction); DRL §175 (in divorce proceedings)
  - "New York has a strong policy in favor of legitimacy" and the presumption that a child born to a marriage is the legitimate child of both parents " 'is one of the strongest and most persuasive known to the law' ". Laura WW. v. Peter WW., 51 A.D.3d 211 (3rd Dept 2008)

Parentage Derived from Marriage

- **Marriage entitled to parentage presumption:** In re Adoption of Sebastian, 25 Misc.3d 567 (2009); Beth R. v. Donna M., 19 Misc.3d 724 (2008); K.B. v. J.R., 26 Misc.3d 465 (2010); Counihan v. Bishop, 111 A.D.3d 594 (2nd Dept 2013); Wendy G-M. v. Erin G-M, 45 Misc.3d 574 (2014); Matter of Seb C-M, NYLJ 1202640083455 (Jan. 6, 2014);
- **3 of 4 appellate divisions have applied marital presumption:** In re Kelly S v. Farah M, 139 A.D.3d 90 (2nd Dep't 2016)(also has RDP); In re Maria-Irene D., 61 N.Y.S.3d 221 (1st Dep't 2017)(also has CU); Christopher YY. v. Jessica ZZ, 159 A.D.3d 18 (3rd Dep't 2018); In re Joseph O. v Danielle B., 158 A.D.3d 767 (2nd Dep't 2018), In the Matter of Alison RR, 190 A.D.3d 12(3rd Dep't 2020)

  - **Marriage not entitled to use the parentage presumption:** Paczkowski v Paczkowski, 128 A.D.3d 968 (2nd Dept 2015)(presumption sought for birth of child *before* marriage); QM v. BC, 46 Misc.3d 594 (2014)(putative father sought to rebut the marital presumption)

Parentage Derived From Marital Equivalents & Adoption

- **Parentage derived from civil union:** "New York will recognize parentage created by a civil union." Debra H. v. Janice R., 4 N.Y.3d 576 (2010).

- **Parentage derived from comprehensive domestic partnership:** Examine laws of celebration state to determine if there are any attendant parental rights. Recent case determined parentage where there was a comprehensive domestic partnership from CA—as a marital equivalent. Kelly S. v. Farah M., NYLJ 1202721838331, at *1 (Fam., SUF, Decided March 13, 2015); *affirmed* Kelly S. v. Farah M., 139 A.D.3d 90 (2d Dept. 2016)

- **Parentage derived from adoption:** Created through a second-parent adoption (Mtr. Of Jacob and Dana, 86 NY2d 651 [1995]) or joint adoption (In re Adoption of Emilio R., 293 AD2d 27 [1st Dept 2002], Adoption of Carolyn B., 774 NYS2d 227 [4th Dept 2004])

Parentage by Estoppel

- **Pre-Conception Agreements:** Brooke S.B. v. Elizabeth ACC, 28 N.Y.3d 1 (2016); see also Frank v, Renee PF, 142 AD3d 928 (2nd Dept 2016) and RPF v. FG, 55 Misc3d 642 (Orange Co. 2017), Dawn M. v. Michael M., 55 Misc.3d 865 (Suffolk Co. 2016), In the Matter of David S. v. Samantha G., 59 Misc.3d 960 (NY Co. 2018), Demarc v. Goodyear, 163 A.D.3d 1430 (4th Dept 2018), Heather NN v. Vinette OO, 180 A.D.3d 57 (3rd Dept 2019), Fern G. v. Kim J., 203 A.D.3d 510 (1st Dept 2022)

- **Post Conception Agreements**: AF v. KH, 56 Misc.3d 1109 (Rockland Co. 2017), Chimienti v. Perperis, 171 A.D.3d 1047 (2nd Dept 2019)
  - *But see* Tomeka NH v Jesus NY, 183 A.D.3d 106 (4th Dept. 2020), Wlock v. King, 181 A.D.3d 1341 (4th Dept. 2020), Shanna O v. James P, 176 A.D.3d 1334 (3rd Dept. 2019); Garnys v. Westergaard, 158 A.D.3d 762 (2nd Dept 2018); extensive litigation beginning in K v. C, 55 Misc.3d 723 (NY Co. 2017) and ending at Kelly G. v. Circe H., 178 A.D.3d 533 (1st Dept 2019) and also K.G. v C.H., 2022 N.Y. Slip Op. 05790 (1st Dept 2022).

"Extraordinary Circumstances"

- Cheryl YY v. Cynthia YY, 152 AD3d 829 (3rd Dept 2017)
- Shanna O v. James P, 176 A.D.3d 1334 (3rd Dept. 2019)
- Piggott's dissent in Brooke SB raises the potential use of "extraordinary circumstances" as a mechanism to claim standing

Custody and Transgender Parents

- No published post-*Brooke S.B.* cases involving transgender parents yet
- Only a handful of any family law cases involving these parents even prior to *Brooke S.B. (see generally slide 23)*
- Same analysis on custody and parentage issues must equally apply to transgender parents as for any other parent (marital presumption, estoppel, etc.)

Emerging Issues

- **Multi-Parent Families:**
  - Chimienti v. Perperis, 171 A.D.3d 1047 (2nd Dept 2019)
  - Shanna O v. James P, 176 A.D.3d 1334 (3rd Dept. 2019)
  - Tomeka NH v Jesus NY, 183 A.D.3d 106 (4th Dept. 2020)
  - Wlock v. King, 181 A.D.3d 1341 (4th Dept. 2020)

- **Polyamorous Families:**
  - Dawn M. v. Michael M., 55 Misc.3d 865 (Suffolk Co. 2016)
  - West 49th St., LLC v O'Neill, 2022 NY Slip Op 22296 (Civil Court Of The City Of New York 9/23/22)(housing case)

Child Support

- Scott v. Adrat, 196 A.D.3d 585 (2nd Dept 2021)

Brooke SB's analysis showed that despite DV-related break-up, the parties did have a pre-conception agreement and that agreement made the non-birth parent responsible for child support

LGBTQ FAMLY LAW CASE LAW UPDATE
Spring 2020 – Spring 2021

FAMILY LAW

Jennifer R v. Lauren B, 68 Misc.3d 225 (2020): Custody modification of joint custody agreement sought by one mother against the child's other mother, her former spouse. This was the latest attempted application for sole custody since the divorce agreement only 2 years earlier despite there being 3 previously unsuccessful bids. Utilizing the pandemic as a change in circumstances, same mother sought an urgent change to sole custody. Other mother sought a writ as her former partner unilaterally refused to allow her scheduled visitation.

Trial court determined that the COVID-19 pandemic did not constitute change in circumstances warranting immediate change in parties' child custody arrangement when one parent relocated to NJ and the other remained in NY. Here petitioner-mother did not allege her ex-wife did anything specific to place child at risk of exposure to virus and, in fact she had engaged in certain behaviors specifically intended to reduce risk and lower the child's exposure, such as reducing number of parenting time exchanges. The petitioner had the option of staying in same borough as her ex-wife during parenting time, especially as both states had high numbers of COVID-19 cases and were under similar states of emergency. The court opined that the child's expressed wish to stay with petitioner could have reflected desire for stability and peace in reaction to petitioner's "unrelenting pursuit of sole custody."

Additionally, the petitioner's failure to comply with the mediation requirement precluded her motion for immediate sole custody. Notably, the court stated, "The parents' behavior during the Pandemic and while the case is pending in court will be relevant to the Referee in her ultimate custody determination."

Erie County Department of Social Services on behalf of J.F. v. R.P., 68 Misc.3d 520 (2020): In parentage, case, birth parent-- a transgender father—who has parented the child since birth with his finacee, established prima facie entitlement to equitable estoppel matter filed by the putative sperm donor. Donor claimed he was intended to be a part of the child's life, but these claims were generally found not credible. Father was able to show that genetic marker (DNA) testing was not in child's best interests. The court noted that the child developed a strong father-son bond with his birth father and has no relationship with donor. The presence of the donor in the child's life would likely undermine the birth father's role as the child's father and potentially jeopardize the relationship with the person both parties agree is, and should be, his primary father. The court did not need to consider the equities between the adult parties or other involved persons as the case turned exclusively on the best interests of the child which was paramount.

Putative donor also made statements the court construed as transphobic and sexist. Concerned that the donor did not consider the birth father a genuine father due to his trans-status the court noted that the donor's motivations to teach the child "how to be a man" were "likely to cause future tensions and difficulties as it is clear that [he] believes [the birth parent] is not capable of turning [the child] into a man." Petition was dismissed.

G.R. v K.R., 68 Misc.3d 1217(A)(2020): In this divorce case, the court began its opinion like this: "The relationship between the parties evidences a classic, unequal power dynamic which is the hallmark of abusive relationships". The decision detailed not only significant emotional and financial abuse at the hands of the wealthy partner, it also detailed sexual abuse and coercion that ultimately led to the victim spouse contracting

HIV and then AIDS. When the divorce was commenced, victim was extremely ill and on public assistance. Victim spouse sought maintenance—to be paid as one lump sum into a Special Needs Trust—a substantial award of equitable distribution because of their substantial business and property assets, and payment of arrears of temporary maintenance unpaid during the pendency of the proceedings.

The court noted incredulously that complicating this case was defendant's "sudden and mysterious 'unforeseen financial hardship,' which conveniently began at the time this divorce commenced, and which he claims makes him unable to pay maintenance and leaves no assets to be equitably divided." This coupled with defendant's repeated failure to provide documentation to verify his claimed loss of income and assets alongside his complete failure to comply with plaintiff's discovery demands. Given plaintiff's lack of knowledge about the couple's finances while they were together greatly hindered his ability to demonstrate the actual state of defendant's financial affairs. Even after a 3-day hearing the court had difficulty making precise determinations. The couple was together 22 years before they were able to legally marry in 2011.

The court found that defendant's lack of candor, lack of compliance with discovery, lack of accounting and tracing of significant assets, deliberate wasteful dissipation of marital assets, could not be rewarded with an unjust award to the victim spouse. Using the 14 (now 15) distributive award factors, the court determined that victim souse was entitled to 50% of the marital property and 15% of the defendant's business. The court imputed income to the defendant and made a maintenance award for a period of 10 years despite the relative brevity of the legal marriage. While the parties were only married for shy of 5 years prior to the commencement of the action, the relationship, in which defendant actively fostered plaintiff's economic dependence upon him, was decades long. Further, because of his failure to make even the temporary maintenance payments, the court ordered special procedures for the defendant to make his monthly payments.

Jessica WW. v. Misty WW, 192 A.D.3d 1364 (3rd Dept 2021): Defendant left the marital home with the child and then plaintiff filed a family offense proceeding and for custody claiming her spouse refused to her see their child. Defendant then filed her own petition for sole custody. Those proceedings ended with a stipulation for joint custody and an order of protection against the defendant. While the stipulation of settlement in custody was pending in the Family Court, plaintiff spouse commenced an action for no-fault divorce against the defendant. Defendant then filed a motion to modify the Family Court custody order to give her primary custody. In reply, plaintiff said if custody was to be re-examined she should be granted sole custody. However, in light of the very recent stipulation in Family Court signed that same year, the divorce court refused to re-litigate the custody issue. After issuing a final judgment of divorce, the court denied defendant's motion without a hearing finding that defendant failed to demonstrate a change in circumstances warranting an analysis of whether modification of the existing custody order was in the child's best interest. Defendant appealed. (Notably, during the pendency of the appeal NEW custody modification petitions were filed!)

The appeals court affirmed finding that there was no change in circumstances. None were raised in the pleadings as the majority of the claims that defendant proffered in support of her motion pertain to allegations of fact that predate Family Court's February 2018 custody and visitation order While email and text exchanges after the custody order revealed that the parties' relationship remained "strained", it appeared no more acrimonious than it was before the Family court order. The record did not show a complete "inability to work and communicate with one another in a cooperative fashion".

Matter of Alison RR, 190 A.D.3d 12 (2020): Married same-sex couple who had a child with the assistance of a sperm donor commenced a family court action seeking an order declaring them as the child's legal parents under Article 5, notwithstanding that child was born during their marriage and they were both listed as child's parents on child's birth certificate. The court dismissed the couple's application without prejudice for lack of jurisdiction and denied their objections. Couple appealed.

The appeals court affirmed. It found that family court lacked jurisdiction to hear parentage petition because the child was not born out of wedlock. It appeared the parents attempted to raise "ancillary jurisdiction" but found that attempt unavailing because there was no underlying petition for custody, child support or some other relief within the core authority of Family Court—just parentage. Parents argued that Family Court was empowered to act because of its "exclusive original jurisdiction over ... proceedings to determine paternity and for the support of children born out-of-wedlock, as set forth in" Family Ct Act Article 5

The court explicitly held that given advances in science, marriage equality, and case law recognizing various LGBTQ partner as parents, Family Ct. Act §§ 115 and 511 vest Family Court with the necessary

subject matter jurisdiction to hear petitions seeking declaration that a person, regardless of gender, is the "parent of a child born out of wedlock [and] chargeable with the support of such child". However, the Legislature has only empowered Family Court to hear "proceedings to determine [parentage] and for the support of *children born out-of-wedlock*" and further defined a child in Article 5 as one "born out of wedlock". Here the parents were married at all times and the child was not born out of wedlock so dismissal on jurisdictional grounds was, unfortunately, proper. The court recognized that the parents may have good reason to want confirmation of their parental status beyond the marital presumption and their identification as the child's parents on her birth certificate.

Dismissal, however, did not leave couple with only the remedy of a costly and time-consuming (second parent) adoption process. The near implementation of the new Child Parent Security Act would allow them to seek a judgment of parentage. Alternatively, if petitioners articulated how "an adjudication of the merits will result in immediate and practical consequences to" them they could "to bring a declaratory judgment action in Supreme Court to determine the status of the child and the rights of all interested parties".

Tomeka NH v. Jesus R, 183 A.D.3d 106 (4th Dept. 2020); 185 A.D.3d 1480 (4th Dept 2020) *motion for leave to appeal to the Court of Appeals denied*; 36 N.Y.3d 909 (2021) *motion for leave to appeal denied*:
Former same-sex partner of child's biological mother served, with biological mother's consent, as a parent to the child post-conception--through nearly all gestation, at birth, and for years afterwards. She brought petition against child's biological parents for joint custody of and visitation with minor child, seeking a "tri-custodial" arrangement. Biological father, who entered the child life years after the petitioner had served as a parent to the child, opposed. Attorney for the child and the biological mother supported the petition. The Family Court granted the father's motion to dismiss the petition for lack of standing. Non-bio mother-petitioner and attorney for the child appealed asserting Tomeka should have standing under Brooke S.B. and subsequent case law. Also argued that the child had a constitutional liberty interest in maintaining their relationship to the person they recognized as a parent since birth. Empire Justice Center and National Center for Lesbian Rights were amici.

The appeals court held that the non-biological mother lacked standing to seek tri-custodial arrangement as third "parent" because the child already had two legally recognized parents and a child may only have two per the footnote in the Court of Appeals case of Brooke S.B. The court also determined that the father was not required to raise standing issue before trial court to permit its consideration on appeal and his due process right to control upbringing of minor child weighed against granting the non-biological parent partner standing to seek "tri-custodial" arrangement, Finally the court held that the father was not equitably estopped from raising standing argument.

There was a strong dissent in this case that disagreed with the majority's rationale and adopted the arguments of the attorney for the child and the petitioner, as well as amici.

Petitioner sought motion for leave to appeal to the Court of Appeals from both the 4th Department and the Court of Appeals but was denied by both courts.

See also **Wlock v. King, 181 A.D.3d 1341 (4th Dept 2020)** decided the same day in the same way by the 4th Department with some similar underlying facts.

For a full treatment of the issue, see also NYSBA Journal article, ***Who's A Parent? The Appellate Division Is Divided on the Answer*** available at: https://nysba.org/whos-a-parent-the-appellate-division-is-divided-on-the-answer/

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IDENTITY CHANGES

Matter of D.C.S., 68 Misc.3d 663 (2020): Civilly committed transgender inmate filed a petition to legally change her first and middle names to reflect her gender identity. She also sought to change her surname that

of her longtime romantic partner. Petitioner was civilly committed because she was a convicted of a sexual offense against a child and deemed a dangerous Level 3 sexual offender.

Attorney General's Office opposed only the changing of the petitioner's last name asserting that changing all of Petitioner's names "would have the compounding effect of causing potential confusion and misrepresentation as to Petitioner's criminal past, and specifically her sexual conviction, all in contravention of the purpose behind SORA" and other laws. Objections to a name change may include factor that the court may infer "fraud, misrepresentation, or intent to interfere with others' rights." In denying the name change the court was concerned that a change of all three names would impact public safety, given the level of dangerousness of petitioner's offense. It does also appear that the court did also base their ruling on the petitioner's gender identity as they wished to change their name from one traditionally associated with one gender to another traditionally associated with another gender.

Further, the court was concerned that a name change order allowing an individual to assume the name of a romantic partner may misrepresent the individuals are legally married, and thus present issues of fraud and misrepresentation—especially as NY does not allow common law marriage. There was also no indication that the petitioner's romantic partner knew about or supported petitioner taking their name. The name change was denied in its entirety.

ESTATE

Stanley v. City of New York, 71 Misc.3d 171 (2020): Decedent's long-time partner commenced action against the city, city office of chief medical examiner, and various employees of office, alleging loss of sepulcher, intentional and negligent infliction of emotional distress, negligence, due process and equal protection violations, and city human rights law violations, stemming from their alleged failure to comply with decedent's desire for their partner to control disposition of decedent's remains. City moved to dismiss action for failure to state a claim.

Frederick was a transgender Muslim man, who wished, upon his death, to avoid any bodily alterations such as autopsy or preservation, to be cremated, and avoid misgendering or reference to his dead name. Fredrick's biological family rejected both his transgender and religious identities so, before he passed, he legally designated his partner to control his remains and effect his specific wishes. The day Fredrick passed his partner sent the designation form to the counsel's office of the medical examiner. Despite receipt of the designation, an autopsy was performed. Frederick was then released to his biological family who, not only buried him in a Christian ceremony, but used his deadname and incorrect pronouns throughout. Plaintiff partner, 8 months pregnant with twins, only learned about this through Facebook and the ensuing shock, heartbreak and trauma caused her to miscarry the pregnancy.

The court found that partner stated a claim for loss of sepulcher (a common law right for the next of kin to determine how to handle the remains of their loved one) because there were questions about the medical examiner's release of the deceased to his biological family without authority. The court determined that the city, office, and employees were not liable for negligent and intentional infliction of emotional distress due to duty owed to the plaintiff. However, the emotional and physical harms claims—including the loss of the pregnancy—were preserved. Finally, the court held that the partner stated a claim for city human rights law violations (anti-transgender and anti-Muslim discrimination, gender discrimination, relationship status), as well as a claim around equal protection/due process and punitive damages.