




MEMORANDUM

TO: New York State Criminal Justice Executives
FROM: Michael C. Green 
Executive Deputy Commissioner
DATE: September 6, 2018
SUBJECT: Raise the Age Legislation

Background

The State Fiscal Year 2017-18 Budget included legislation to raise the age of criminal responsibility to 18 years of age.¹ This newly enacted legislation includes statutory amendments that a) create a new Adolescent Offender (AO) classification; b) establish a new Youth Part in the Superior Court; and c) require misdemeanor cases, with the exception of Vehicle and Traffic Law (VTL) misdemeanors, to be heard in Family Court. **All statutory amendments pertaining to 16-year-olds take effect October 1, 2018, and for 17-year-olds are effective October 1, 2019.**

Outlined below and in the attached chart is a summary of how the new legislation will impact law enforcement officers when taking 16- and 17-year-old offenders into custody.

16- And 17-Year-Old Charged With A Misdemeanor, Traffic Infraction, Or Violation

Misdemeanors:

(Other than VTL Misdemeanors and Misdemeanors accompanied with a Felony Charge)

Upon the relevant effective dates, a 16- or 17-year-old arrested for a misdemeanor² will be considered a juvenile delinquent and the case heard in Family Court.³ Law enforcement should utilize the same arrest procedures for juvenile delinquents when processing 16- and 17-year-olds charged with a qualifying misdemeanor and should use the juvenile delinquent custody determinations set forth in Family Court Act 305.2. If, pursuant to Family Court Act 305.2(4)(b), law enforcement takes the child directly to family court and **court is not in session, the statute now requires the youth be taken to the most accessible magistrate**, if any, designated by the Appellate Division of the Supreme Court. A 16- or 17-year-old may not be housed with adults in these circumstances.⁴

VTL Misdemeanors:

If a custodial arrest is made, a 16- or 17-year-old charged with a VTL misdemeanor should continue to be processed as an adult⁵ since the case will be heard in adult criminal/local court.⁶

Traffic Infractions and Violations:

Like VTL misdemeanors, the process will remain the same for any 16- and-17-year-old charged with a traffic infraction⁷ or a violation.⁸ The case will be heard in adult criminal/local court.⁹ Note that, unlike persons 15 years of age or less, 16- and 17-year-olds may still be charged with violations and traffic infractions.

16- And 17-Year-Old Charged With Felonies - Adolescent Offenders (AOs)

Violent Felonies¹⁰ and Non-Violent Felonies:¹¹

A 16¹²- or 17¹³- year-old charged with a felony is an AO.¹⁴ AOs will be arraigned¹⁵ in the newly established Youth Part of the Superior Court, or when Court is not in session they must be brought before the designated magistrate for arraignment.¹⁶

The Criminal Procedure Law authorizes a police officer to issue appearance tickets, instead of a physical arrest, when a person is charged with most E felonies as designated in CPL § 150.20. Nearly one third of felony arrests of 16- and 17-year-olds are for Class E felonies that, pursuant to statute, are eligible for issuance of an appearance ticket.

Misdemeanor Charges Accompanied with a Felony:

A 16- or 17-year-old charged with a misdemeanor and a felony, alleged to have been committed as a part of the same criminal transaction, will be considered an AO and processed as an adult prior to arraignment in the Youth Part.¹⁷

13- To 15-Year-Olds

Juvenile Delinquents (JD):

The processing and custody determination¹⁸ of juvenile delinquents ages 13 to 15 will generally remain the same. However, as mentioned previously, in custodial arrest situations where Family Court is not in session, the statute now requires law enforcement to take the child before the most accessible magistrate.¹⁹

Juvenile Offenders (JO):

The processing of JOs,²⁰ will remain the same for youths ages 13 to 15 who commit certain qualifying serious crimes. However, all 13- to 15-year-olds charged as JOs will now have their cases adjudicated in the Youth Part - when the Youth Part is not in session they must be brought before a designated magistrate for arraignment.²¹

Arrest Procedures

Arrest on a Warrant:

CPL § 120.30 has been amended to add that an AO or JO arrested on a warrant issued from the Youth Part must be brought before the Youth Part of the Superior Court in which the warrant is returnable, provided that court is in session. If the Youth Part is not in session, the officer must bring the individual before the designated magistrate for arraignment purposes.

Fingerprinting:

Traffic Infractions, Violations, and Misdemeanors

Similar to adults, 16- and 17-year-olds charged with traffic infractions and violations may not be fingerprinted. Misdemeanors (other than VTL misdemeanors) will no longer be printable offenses for 16²²- or 17²³-year-olds since they will be considered JDs.²⁴ As such, any attempts to submit fingerprints via Livescan for these non-printable offenses will be rejected.

Felonies or Fingerprintable VTL Misdemeanors

A 16- or 17-year-old charged with a felony or a VTL printable misdemeanor should still be fingerprinted pursuant to CPL § 160.10(1).

Parental Notification:

A parent or other person legally responsible for the 16²⁵- or 17²⁶-year-old's care must be immediately notified that the individual has been arrested, and the location of the facility where he or she is being detained.²⁷

Questioning:

If questioning of a 16²⁸- or 17²⁹-year-old is to occur, it must be held in a facility suitable for the questioning of a juvenile pursuant to the requirements of 22 N.Y.C.R.R. 205.20. The youth may also be questioned for a reasonable period of time at his or her residence, upon the consent of a parent or other legally responsible person. Miranda rights are always required during a custodial interrogation, regardless of suspect age. If present during questioning, a parent or other person legally responsible for the care of the juvenile, must also be advised of the Miranda warnings.³⁰

Video Recording of Custodial Interrogations:

A custodial interrogation must³¹ be recorded if a 16- or 17-year-old, regardless of classification, commits a qualifying offense.³²

16- And 17-Year-Old Youth Arrest Information

Provided below is information to assist law enforcement agencies in determining the new legislation's impact on cases involving 16- and 17-year-olds. Most information is shown by county.³³

For information related to 16- and 17-year-old arrests and case dispositions, please refer to the DCJS Statistics page of the website, which includes the following links:

1. Arrests Involving 16- and 17-Year-Olds by County - <http://www.criminaljustice.ny.gov/crimnet/ojsa/youth-arrests/index.htm>
2. Dispositions of Arrests Involving 16- and 17-Year-Olds by County - <http://www.criminaljustice.ny.gov/crimnet/ojsa/dispo-youth-arrests/index.htm>

For information related to Juvenile Justice trends for 7–15-year-olds, please refer to the following links:

1. Juvenile Justice County Profiles - <http://www.criminaljustice.ny.gov/crimnet/ojsa/jj-profiles.htm>
2. Five Year Trend Tables - <http://www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/five-year-trend-tables.html>
3. Juvenile Arrests Reported by Police - <http://www.criminaljustice.ny.gov/crimnet/ojsa/juvenilearrests/index.htm>

For further information regarding the new legislation and to view frequently asked questions please visit <https://www.ny.gov/programs/raise-age-0>.

Enclosed please find a chart summarizing the law enforcement pre-arraignment implications of the new legislation.

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- ¹ PL § 30.00(1).
- ² As defined by PL § 10.00(4).
- ³ Family Court Act § 301.2(1).
- ⁴ Family Court Act § 720(1).
- ⁵ PL § 30.00(3)(d)(iii).
- ⁶ “Adult/Local Criminal Court” means: District Court; New York City Criminal Court; City Court; Town Court; Village Court; or a Supreme Court Justice or County Court Judge sitting as a local criminal court.
- ⁷ As defined in VTL § 155.
- ⁸ As defined in PL § 10.00(3).
- ⁹ PL § 30.00(3)(b) and (c).
- ¹⁰ AO (16- and 17-year-old) charged with a violent felony, as defined in PL § 70.02, will begin in Youth Part and can be transferred from the Youth Part to the Family Court if the charges do NOT include the accused displaying a deadly weapon in furtherance of the offense, causing “significant physical injury,” or engaging in unlawful sexual conduct. If the charge does include one of these elements, removal to Family Court is only possible with consent of the District Attorney.
- ¹¹ AO (16- or 17-year-old) charged with a nonviolent felony, which is any felony other than any class A felony except for those defined in PL § 220, a violent felony defined in PL § 70.02, or a felony listed in paragraph one or two of CPL § 1.20(42), will be arraigned in Youth Part and where appropriate, be removed to Family Court, unless the District Attorney (DA) files a motion within 30 days showing “extraordinary circumstances” as to why the case should remain in the Youth Part. If the court then determines that extraordinary circumstances justify the case remaining in criminal court, then it will remain in the Youth Part. Otherwise, the case will be removed to Family Court and handled pursuant to Article 3 of the Family Court Act.
- ¹² Beginning October 1, 2018.
- ¹³ Beginning October 1, 2019.
- ¹⁴ The Adolescent Offender designation is established in CPL § 1.20(44).
- ¹⁵ CPL § 722.21.
- ¹⁶ CPL §§ 140.20(8) and 722.10.
- ¹⁷ PL § 30.00(3)(d).
- ¹⁸ Family Court Act § 305.2.
- ¹⁹ Family Court Act § 305.2(4)(b).
- ²⁰ CPL § 1.20(42) and PL §§ 10.00(18) and 30.00.
- ²¹ CPL §§ 140.20(8) and 722.10.
- ²² Beginning October 1, 2018.
- ²³ Beginning October 1, 2019.
- ²⁴ Family Court Act §§ 301.2(1) and 306.1.
- ²⁵ Beginning October 1, 2018.
- ²⁶ Beginning October 1, 2019.
- ²⁷ CPL §§ 140.20(6) and 140.27(5).
- ²⁸ Beginning October 1, 2018.
- ²⁹ Beginning October 1, 2019.
- ³⁰ CPL §§ 140.20(6) and 140.27(5).
- ³¹ See CPL § 60.45(3)(c) for good cause exceptions to this recording mandate.
- ³² Qualifying offenses: class A-1 non-drug felonies, all A-II felonies codified in sections 130.95 and 130.96 of the New York State PL (PL), all B violent felonies codified in section 125 of the PL, and all B violent felonies codified in Section 130 of the PL.
- ³³ Any police department who would like historical arrest data for 16- and 17-year old youths should email the DCJS stats mailbox at DCJSStats@dcjs.ny.gov.

Law Enforcement Pre-Arrest Processing of a 16- and 17-Year-Old

Effective October 1, 2018 for 16-year-olds

Effective October 1, 2019 for 17-year-olds

	Traffic Violation	Violation	Vehicle and Traffic Law Misdemeanor	Misdemeanor (Except VTL Misdemeanors)	Felony (Violent and Non-violent)
Holding Location	Child Designated Questioning Facility ¹	Child Designated Questioning Facility ¹	Child Designated Questioning Facility ¹	Child Designated Questioning Facility ¹ or Juvenile Detention Facility ²	Child Designated Questioning Facility ¹
Fingerprintable	NO	NO	YES	NO	YES
Parental Notification of Arrest and Location Held	YES	YES	YES	YES	YES
Questioning Location	Child Designated Questioning Facility ³	Child Designated Questioning Facility ³	Child Designated Questioning Facility ³	Child Designated Questioning Facility ³	Child Designated Questioning Facility ³
Mandated Video Recording	NO	NO	NO	NO	For Qualifying Offenses ⁴
Court of Arraignment	Adult Criminal/Local Court	Adult Criminal/Local Court	Adult Criminal/Local Court	Family Court	Youth Part of Superior Court

¹ Raise the age did not address where a 16- or 17-year-old charged with a traffic violation, violation, V&T law misdemeanor, or a felony should be held prior to arraignment. At this point the defendant is criminally responsible as an adult. If pre-arrestment detention is necessary, per forthcoming guidance from the Office of Court Administration (OCA), the use of child designated questioning facilities for such detention would be the best practice as it is authorized in CPL §§ 140.20(6) and 140.27(5). As it is the function of the Courts to designate and regulate these questioning rooms (22 NYCRR 205.20), OCA will be issuing the appropriate guidance.

² Family Court Act § 305.2(4)(c).

³ Facility designated pursuant to CPL §§ 140.20(6) and 140.27(5) and 22 NYCRR 205.20.

⁴ Qualifying offenses: class A-1 non-drug felonies, all A-II felonies codified in PL §§ 130.95 and 130.96, all B violent felonies codified in PL § 125, and all B violent felonies codified in PL § 130.