

NYCLU recommendations regarding provisions in Governor Cuomo's Raise the Age legislation included in the 2015 executive budget

- **Delete provision that permits the Youthful Offender adjudication of a violent felony offense involving a 16- or 17-year-old to be used as predicate when determining charges or sentencing regarding a subsequent violent felony offense.**
 - One of the central purposes of youthful offender adjudication is to minimize the future consequences of a conviction that occurred in a person's youth. Permitting predicate sentencing erodes this purpose, and eliminates judicial discretion to considering mitigating circumstances regarding a subsequent offense.
- **Delete provision that requires determinate sentencing for youths sentenced under Juvenile Offender or Youthful Offender statutes.**
 - Indeterminate sentencing tends to reduce sentencing disparities among counties. Determinate sentences, on the other hand, vary by county. Juveniles may receive the maximum sentence for a crime adjudicated in one county, but the minimum sentence for the same crime, if adjudicated in another county. Moreover, determinate sentencing can deter juveniles from exhibiting good behavior and participating in education and rehabilitation programs because there is no prospect of reducing a sentence.
- **Amend the provision that creates a rebuttable presumption for removal of certain offenses to Family Court.**
 - First, the bill should clearly state that there is a rebuttable presumption that cases involving 16- and 17-year-olds charged with robbery in the second degree or violent felonies will be removed to Family Court. Second, the bill should permit prosecutors to rebut this presumption only upon a showing that it is in the interest of justice to retain the case in criminal court, based upon the factors identified N.Y. Criminal Procedure Law § 210.43. Third, the bill should be revised to preserve a defendant's pre-indictment right to seek removal to Family Court, as currently provided in Criminal Procedure Law §180.75.
- **Amend the factors that may be considered in the interest of justice, pursuant to N.Y. Criminal Procedure Law Law § 210.43, when evaluating the removal of a case to Family Court.**
 - The list should be amended to include: (1) the age of the child; (2) the sophistication and maturity of the youth, as determined by consideration of his home and environmental situation, and his emotional, mental, and psychological capacity; (3) racial disparities in juvenile cases removed to Family Court; and (4) whether the youth can benefit from rehabilitative programs available in Family

Court. Similar factors are applied to juvenile cases in Missouri. If New York is to be a leader in juvenile justice reform, its courts should consider these factors when making determination regarding removal to Family Court.

- **Amend the legislation to require the videotaping of custodial interrogations of 16- and 17-year olds facing felony charges.**
 - Teenagers are susceptible to coercive tactics used by prosecutors, which can lead to false confessions. Requiring that police and prosecutors videotape interrogations of 16- and 17-year-olds will improve the integrity of the interrogation process and ensure the reliability of confessions and incriminating statements.

- **Amend the legislation to provide that non-violent offenses are referred to Youth Parts. certain Juvenile Offender crimes and felonies to begin in criminal court for 16- and 17- year-olds, should be revised in the Executive budget bill so that non-violent offenses begin in the Youth Parts.**
 - Juveniles should not be criminally responsible for non-violent offenses. The existing legislation requires that vehicle and traffic law offenses for 16- and 17-year-olds are referred to adult criminal court. The bill should instead require that vehicle and traffic law offenses, except for felony vehicular assaults, are assigned to Youth Parts under the jurisdiction of the Family Court Act. Felony vehicular assaults may be referred to Youth Parts with criminal court jurisdiction.

- **Delete the provision that would grant courts statutory authority to impose on 16- and 17-year-olds the same sentences imposed upon adults for Class A felony offenses and Class B violent felony offenses when a court finds aggravating circumstances.**
 - Juveniles should not be subject to the same sentencing standards that apply to adults. The proposed amendment is particularly important in light of the Commission's finding that there are drastic differences between adult and adolescent cognitive abilities, emotional maturity, capacity for self-regulation, decision making, and sensitivity to influence by peers.