CONTINUING LEGAL EDUCATION

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THE REPRESENTATION OF ADOLESCENTS IN ADULT CRIMINAL COURTS - PART I

THE LEGAL FRAMEWORK APPLICABLE TO ADOLESCENTS TRIED IN ADULT COURTS – THE AGE OF CRIMINAL RESPONSIBILITY, THE JUVENILE OFFENDER LAW, AND THE YOUTHFUL OFFENDER LAW

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The Representation of Adolescents in Adult Criminal Courts

"Justice is the Firm and Continuous Desire to Render Every Man His Due."

-- Justinian

A sense of justice that is not lenient, but aligned with the reality of the adolescent defendant

- How many young people are we talking about and why is this important?

In 2009, according to data provided by the New York State Division of Criminal Justice Services (DCJS), 46,129 children under eighteen years of age were prosecuted as adults in New York State's criminal justice system; 27,757 of these children were prosecuted in New York City's adult criminal courts, including statewide, approximately 600 13-, 14-, and 15-year-olds charged pursuant to the Juvenile Offender Law..

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Recidivism Trends for Adolescents Tried in Adult Court

National research demonstrates that adolescents in the adult system reoffend at a higher rate than adolescents in the juvenile system.

New York City Data show that they also reoffend at a higher rate than other adults. For example, among 16-19 year olds who were arrested in 2009, 41 percent were rearrested within a year of their first arrest, and 17 percent were rearrested for a felony. The corresponding rates for individuals 20-24 , in turn, were 35 percent and 14 percent, and they continue to decrease as age increases.

Challenges

- The criminal prosecution of these adolescents produce a range of challenges for judges, defense attorneys, prosecutors, and other criminal court personnel assigned such cases.

Challenges

- Cross-system involvement
- Monetary conditions
- Speedy trial concerns
- Comprehension

Cross-System Involvement

- Many arrested youth are involved in the child welfare system prior to and during the time they come to the attention of the court.
- Cross-System Involvement complicates coordination of services for these youth.

Monetary Conditions

- The use of monetary conditions for youths---Bail---ordinarily do not take into account that young offenders rarely have income or assets; Parents are usually going to pay or be responsible for any bail set as well as fines or surcharges.

Speedy Trial Concerns

- Instant feedback is important for children to learn whether or not they've made good decisions.
- A sooner response is better than a delayed response.
- Speedy trial issues, thus become quite important and may have broader corrective implications and not just procedural effects.

Comprehension

- Level of understanding of proceeding and procedures-The average IQ for children in the justice system is 80, as opposed to 100 for the general population.
- The law generally recognizes 70 and below as an indication of mental disability.
- According to Doctor Thomas Grisso, Youth 14 and under with an IQ under 70 are largely incapable of understanding their self- incrimination rights and intelligently waiving them.

Loretta

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We Begin....

- We begin with an examination of the current legal framework by which young people, minors, are prosecuted and adjudicated in adult courts.
- Then we will discuss an approach that will help us enhance our capacity to hold youth accountable for there misconduct in ways that get them back on track, instead of punishing them in ways that derail there transition to a productive adulthood.

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Legal Framework for the prosecution and adjudication of youth tried in adult courts

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Three Laws

1. *Age of Criminal Responsibility*
2. *The Juvenile Offender Law*
3. *Youthful Offender Law*

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New York's Age of Criminal Responsibility

The boy and The Book of Genesis

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Free-will

- The well-spring of criminal responsibility informs:
  - The defense of infancy;
  - Concept of diminished responsibility;
  - The concept of proportionality;

The Concept of Criminal Responsibility

The concept of criminal responsibility is rooted in a view of human nature that holds that man is naturally endowed with a free will and the capacity to make reasoned choices.

These two factors, free will and rationality, give man his autonomy and independence. The exercise of the will in a reasoned manner, therefore, renders human actions appropriate or culpable.

The Common Law

- Under the Common Law, children under the age of 7 were conclusively presumed to be incapable of criminal responsibility for their acts.
- Youths between the age of 7 and 14 were presumed to lack such responsibility, but this presumption could be overcome by the prosecution.

A Linear Continuum of Culpability

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Behavioral Scientists

- In the case of teenagers behavioral scientists and child development specialists have argued that adolescents are developmentally different from adults in that they have a diminished capacity to resist negative peer influence and know right from wrong.

Developmental Traits and Judicial Policy

- They also argue in determining the criminal responsibility of adolescents, We must recognize the peculiar traits of this stage of life that impact on a teenager's exercise of his free will.
- These developmental differences support a judicial policy which recognizes that children and teenagers are entitled to special care and protection because they are still developing physically, mentally, and emotionally.

Diminish Capacity and Proportionality

- These differences also support a judicial policy that recognizes the diminished capacity and responsibility of children and adolescents.
- These differences also support the doctrine of proportionality, or punishment in just proportion to culpability.

Setting an age of criminal responsibility.

- Our nation's system of dealing with youth who violate the law revolves around a statutory age at which adult criminal responsibility automatically begins or attaches.
- Each state has established a threshold age of criminal responsibility. Individuals who reach the statutory age are placed under the jurisdiction of the adult criminal court, while those who are younger fall under the jurisdiction of the juvenile court.

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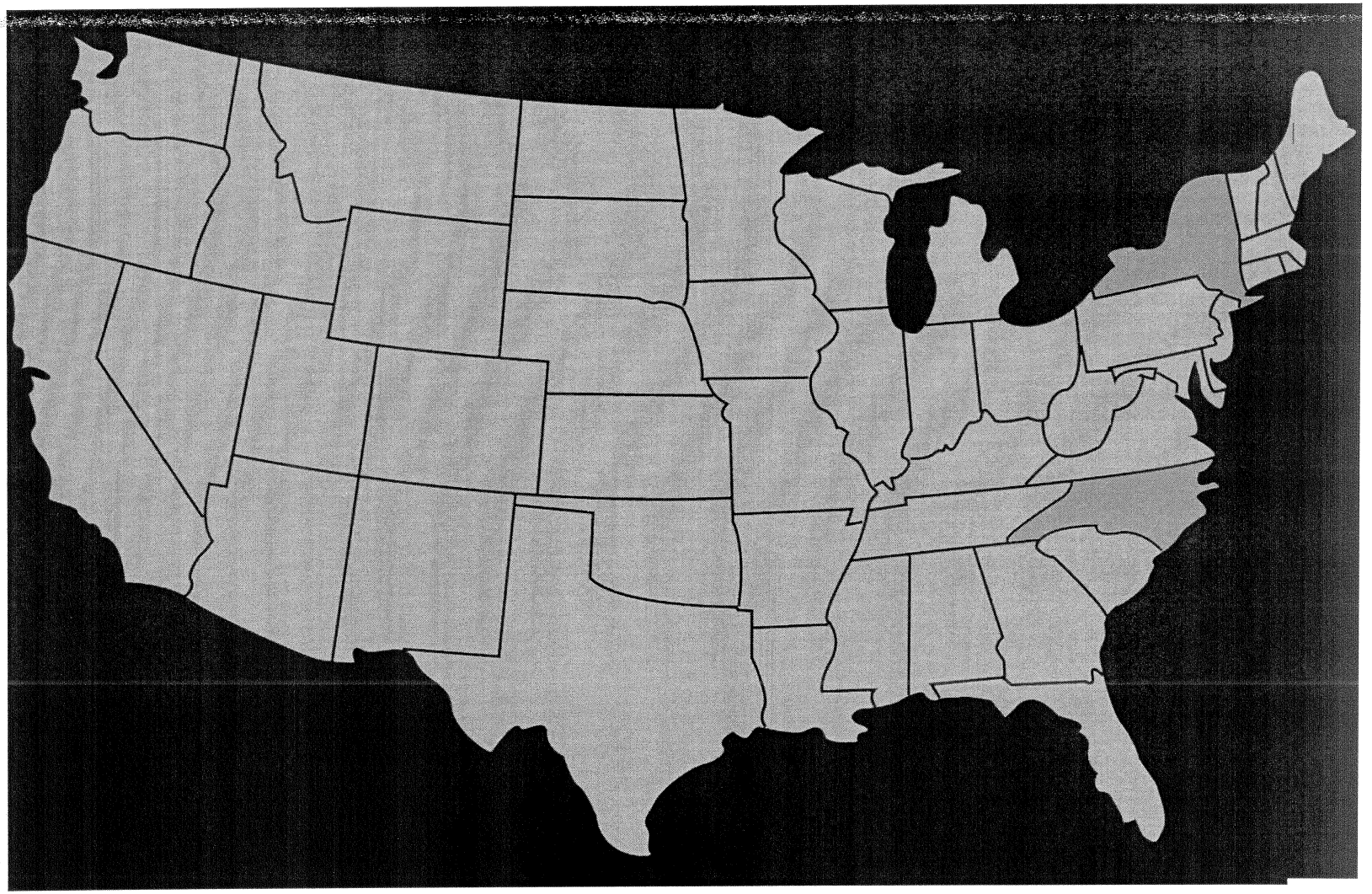
Safety Valve

- Every state excludes certain offenses from the scheme in some fashion.
- Each state has created a safety valve for the prosecution of violent offenders and offenses either through judicial waiver, prosecutorial waiver or legislative waiver .

Setting an Age of Criminal Responsibility



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New York's Age of Criminal Responsibility

New York is one of only two states—North Carolina is the other—that draws the line for adulthood for criminal justice purposes at 16. Further, children as young as 13 may also be prosecuted as adults if accused of certain offenses defined by New York's Juvenile Offender Law.

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The Age of Criminal Responsibility

Subdivision 1 of Section 30.00 of the Penal Law embodies the statutory defense of Infancy and establishes 16 as the general age of criminal responsibility in New York

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- As a result, these youth are not subject to the jurisdiction of the family court.
- They are statutorily deemed criminally responsible for their behavior as adults, Their cases are adjudicated in adult criminal courts, and they are subject to the same procedures and potential criminalization as adults.

The Nub of the Problem

- Moreover, they do not have the opportunity to participate in the array of social service programming available in the family court.

A certain arbitrariness

- We are surrounded by states where the age of criminal responsibility is higher then it is in New York.
- For Example: New Jersey
    - Connecticut
    - Massachusetts
    - Pennsylvania

- If we travel from the state of New jersey, where the age of criminal responsibility is 18, and we cross the Hudson River to New York, where the age of criminal responsibility for murder is 13, do we suddenly acquire by that voyage the presumptive wisdom and judgment of an adult?

- Also consider the anomaly that in New York a child of 13 is considered criminally responsible for murder but not robbery.

- Chronological age is therefore merely a convenient approximation of maturity.
- Children at any given moment have actually three ages:
  - Chronological age
  - Biological age
  - Intellectual age

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The Adult- Juvenile

- According to Professor Carla Barrett, John Jay University, in her book " Courting Kids", She states: "The normalization of the prosecution of youth in adult courts has created a unique category of defendant in criminal courtrooms- the adult-juvenile.

The Adult-Juvenile

"The adult-juvenile is a person under the age of eighteen prosecuted in adult criminal courts. The adult-juvenile is legally labeled as an adult in the criminal justice system for the purpose of prosecution, yet still defined as a minor in all other legal and social settings."

-- Professor Carla Barrett

John Jay University

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Treatment of Minors in Other Legal and Social Settings

In the United States, youth under eighteen cannot:

- Vote
- Purchase or consume alcohol
- Marry
- Serve on juries
- Enter binding contracts

How does New York's system work Jurisdictionally?

- For Example: If three young boys one thirteen, one fourteen and one seventeen were arrested in New York for robbery in the first degree, The 14 and 17 year olds would be automatically prosecuted in the adult criminal court. The 14 year old pursuant to the JO law, the 17 year-old is legally considered an "adult" because of New York's general age of criminal responsibility , but the thirteen year old would be prosecuted as a juvenile delinquent in the family court.

Commonsense/Criminal Justice Sentencing Policy

- Historically, there has been a long tradition of tension between our commonsense experience with teenagers and juvenile and criminal justice sentencing policy.

Tension

- The tension arises between the competing notions that children should be treated harshly for committing serious crimes and the idea that adolescents are different from adults and therefore should be subject to sentencing alternatives and attempts at rehabilitation.

An Extraordinary case of Juvenile Violence

No where was this tension more evident then in the crisis precipitated by an extraordinary case of juvenile violence which occurred in 1978.

The Juvenile Offender Law

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Willie Bosket

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The Historical Context

- Prior to 1978, an extraordinary case of juvenile violence- a gubernatorial election and public frustration with the Juvenile Justice system resulted in enactment of N.Y's juvenile offender law.

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Prior to 1978

- In New York, prior to 1978, all children under 16 years of age regardless of the offense charged, including murder, were subject to the exclusive jurisdiction of the family (juvenile) Court where they could be "placed" for no more than five years or until they reached the age of 21.

Safety-Valve

- This proved to be a mistake, New York should have had a " safety-valve" written into the law that would have permitted certain children's cases to be heard in Adult Court –children who were determined after a hearing before a family court judge-to be a significant danger to the public as demonstrated by the nature of their offense and their past delinquent behavior.

A Boy By The Name Of Willie Bosket

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The Legislature

- The legislature had an opportunity to remedy the situation but instead of providing the Family Court with the authority to transfer violent and dangerous juveniles to the adult court where they would presumably be exposed to lengthier periods of confinement- by adopting a waiver up or transfer system-(the most common system in the country at the time)-the New York legislature, instead, authorized the wholesale movement of an entire category of children to the adult court on no more of a developmentally sophisticated basis than their reaching a threshold age of 13 and accused of the crime of the murder, 14 and were accused of the crime of robbery, assault and the other newly characterized "juvenile offender" offenses.

- Without regard to the youth's individualuality, potential or extent of involvement in the underlying crime.
- As a result the cases of 13,14, and 15 year olds who were charged with the most serious crimes- were to be automatically prosecuted in the adult courts, and equally significant would now be subject to mandatory imprisonment and the life time stigma of a felony record upon conviction.

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Avoiding Mandatory Imprisonment

- The only way mandatory imprisonment could be avoided under the JO law was for a judge to exercise his or her discretion to grant the legal equivalent of a second chance by declaring the youth a "youthful offender".
- A difficult choice given The Presumptive Punitive Response contemplated by the Law.

Lack of Resources

- When the legislature authorized the JO law all it did was deliver the bodies of these children's to the adult court house steps.
- It gave the adult courts no additional resources to address the special issues/needs these offenders presented.
- No judicial training
- No additional services.

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1978

On September 1, 1978, the Juvenile Offender Law, established a new class of defendant called the "Juvenile Offender" to whom the statutory defense of infancy against criminal charges was no longer available. N.Y. Penal Law Section 30.00(2).

The New Class

The new class was defined by the crime(s) the juvenile allegedly committed and the age of the individual at the time of the alleged commission of the offense.

Unlike judges of the family court, adult court judges are not statutorily authorized to sentence a Juvenile Offender to "placement" in a private voluntary agency or a residential treatment center, even though one of those agencies might better serve the youth's needs and further protect society.

Consequently, Juvenile Offenders (and 16- and 17-year-olds because of the general age of criminal responsibility) are unable to access a broad array of resources that are available only through the family court.

Special Issues

Roberta

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Maria

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Maltreatment and Delinquency

- The link between child maltreatment and delinquency is inescapable.
- Researchers have suggested that:
  - Maltreatment teaches aggression as a means of solving problems;
  - It prevents children from feeling empathy for others;
  - It is an affront to their sense of fairness;
  - Destroys their sense of trust;
  - Diminishes their ability to deal with stress;
  - It destroys the fabric that bonds them to family and community.

Juvenile Offender Procedure

- All the provisions of the Criminal Procedure Law apply with equal force to adult and Juvenile Offenders unless otherwise specifically provided.
- The essential difference is the availability of the removal procedure (Article 725 of the CPL) for Juvenile Offenders

In Sum

- In sum the JO law vested exclusive original jurisdiction over Juvenile Offenders in the adult criminal court system.
- These juveniles were to be arraigned, indicted, adjudicated and sentenced in this system unless at some time during the proceedings the case was "removed" to Family Court.

Removal

Article 725 of the CPL

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The term “removal” is not defined by either the Penal Law or the Criminal Procedure Law. Practically, it refers to the process by which jurisdiction over proceedings involving a Juvenile Offender are transferred from a criminal court to the family court for Juvenile Delinquency proceedings.

The Motion to Remove CPL 210.43

A removal motion may be made by any party, or a superior court may order removal to the family court on its own motion, after arraignment of a Juvenile Offender on an indictment. A local criminal court may not remove on its own motion.

Consent of the District Attorney

If the Juvenile Offender indictment charges murder in the second degree, rape, criminal sexual act in the first degree, or an "armed felony," the court needs the consent of the district attorney and must find specific factors in mitigation of the defendant's commission of the crime in accordance with CPL 210.41 subdivision 1 subdivision b.

Mitigating Factors

1. Mitigating circumstances bearing directly on the manner in which the crime was committed.
2. The defendant's participation in the crime was relatively minor.

Mitigating Circumstances

- The defendant hid behind a fence during the robbery.
- The defendant committed the robbery in retaliation for another robbery.
- The victim was shot during a game (Playing with the gun)

Non-Mitigating Circumstances

- That the defendant had been sexually molested in the past, found not to be a mitigating circumstance for the defendants sexual assault.
- The defendants use of a starter pistol in the course of a robbery.

The General Statutory Factors that the Court Must Considers on a Removal Motion

(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.

NY Criminal Procedure Law § 210.43

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A Detailed Record

- The court must state in detail the reasons for removal.
- The purpose of this requirement is to assure that removals are not granted as a matter of course-and to provide a record for subsequent analysis of the workings of the JO law.

CPL Article 725 permits discretionary removal to family court at each juncture of the criminal proceeding if factors that become apparent at that time merit less severe treatment.

- Juvenile Offenders have a different sentencing structure, different plea bargaining options, and they are housed in different types of detention facilities then youth 16 years and over.

Sentencing Juvenile Offenders

The sentencing structure of a Juvenile Offender is an indeterminate sentence. In contrast to youth 16 and over convicted of similar felonies, who are subject to a determinate sentencing structure.

A Juvenile Offender who is not adjudicated a "Youthful Offender" must be sentenced to an indeterminate sentence of imprisonment.

JO Offenses (13-year-olds)

Murder in 2nd Degree
(intentionally or depraved indifference)

Penal Law Section 10.18(1)

JO Offenses (14- and 15-year-olds)

- Murder 2 (intentional, depraved indifference, felony murder (if underlying crime is a JO offense))
- Aggravated Sexual Abuse
- Arson 1
- Arson 2
- Assault 1 ((1) Serious physical injury with weapon or (2) disfiguring or disabling injury)
- Attempted Kidnapping 1
- Attempted Murder 2
- Burglary 1
- Kidnapping 1
- Manslaughter 1
- Rape 1
- Robbery 1
- Robbery 2 ((1) Causes physical injury or (2) displays what appears to be a firearm)
- Criminal Sexual Act 1
- Criminal Possession of a Weapon 2 (on school grounds)
- Burglary 2 (deadly weapon, physical injury, dangerous instrument, or displays what appears to be a firearm)

Penal Law 10.18(2)

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Sentencing of Juvenile Offenders

Offense	Minimum	Maximum
Murder 2	5-9 years (13-year-olds); 7 ½ - 15 years (14- and 15-year-olds)	Life
Arson 1 Kidnapping 1	4-6 Years	12 - 15 years

The Juvenile Offender Handbook, Eric Warner, 2007

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Sentencing of Juvenile Offenders

Offense	Minimum	Maximum
Aggravated Sexual Abuse 1 Arson 2 Assault 1 Attmptd Kidnap. 1 Attmptd Murder 2 Burglary 1 Criminal Sexual Act 1 (Previously Sodomy) Manslaughter 1 Rape 1 Robbery 1	Class B Felony One-third of maximum actually imposed	3 – 10 years

The Juvenile Offender Handbook, Eric Warner, 2007

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Sentencing of Juvenile Offenders

Offense	Minimum	Maximum
Burglary 2 CPW 2 Robbery 2	Class C Felony One-third of maximum actually imposed	3 – 7 years
CPW 3	Class D Felony One-third of maximum actually imposed	3 – 4 years

The Juvenile Offender Handbook, Eric Warner, 2007

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The Youthful Offender Law

The Story of Qing Hong Wu

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- The story of Qing Hong Wu illustrates the potentially disastrous collateral consequences of a youthful conviction and accentuates the significance of YO treatment.

Adjudication as a youthful offender benefits a teenager in three basic ways:

1. First, it provides for a separate sentencing structure (including probation)
2. Second, no criminal stigmatization is attached to the conviction
3. Third, confidentiality

Youthful Offender Law

CPL Article 720

New York's Youthful Offender procedure provides an avenue for the court to exercise discretion upon the conviction of youths 14 through 18, in order to avoid the lifetime stigma of a criminal conviction and the imposition of certain mandatory sentences of imprisonment.

Youthful Offender Treatment

"If in the opinion of the court the interest of justice would be served by relieving the eligible youth from the onus of a criminal record and by not imposing an indeterminate term of imprisonment of more than four years, the court may, in its discretion, find the eligible youth is a youthful offender."

Criminal Procedure Law § 720.20(1)(a)

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Youthful offender treatment

Is a discretionary remedy .

- At the time of the youthful offender law's passage in 1943, the state legislature was reluctant to raise the age of jurisdiction of what was then called the "children's court." But, it was also inclined to support an alternative sentencing option for some 16 to 19 year olds who were not considered serious violent and repeat offenders.
- The Youthful Offender discretionary power was given to criminal court judges in order to facilitate rehabilitation-centered case processing for 16 to 19 year olds found to be worthy of such an approach.

How does the nature of the crime and the defendant's prior record affect the eligibility for Y.O. treatment in a felony case?

The Criteria for YO Eligibility

1. The defendant is not convicted of a Class A-I or Class A-II felony
2. A defendant has not been previously convicted and sentenced for a felony
3. A defendant has not previously been adjudicated a youthful offender following a felony conviction
4. The defendant has not been previously adjudicated a juvenile delinquent who committed a "designated felony act."

The Criteria for YO Eligibility (cont.)

Furthermore, a defendant convicted of an "armed felony" or of rape in the first degree, sodomy in the first degree, or aggravated sexual abuse is not eligible to be found a Y.O. (CPL 720.10(2)(a)(ii)[iii]) unless the court finds that special mitigating factors exist (CPL 720.10[3]).

- Unlike “Removal”, there is no statutory formulation of criteria or factors a court must consider on a application for Youthful Offender treatment.

Youthful Offender Criteria

In People v. Cruickshank, 105 App.Div.2d 325, 333 (Third Dep't. 1985), the court stated that the factors to be considered upon an application for youthful offender treatment include:

- "the gravity of the crime and manner in which it was committed
- "mitigating circumstances"
- "defendant's prior criminal record"
- "prior acts of violence"
- "recommendations in the presentence reports"
- "defendant's reputation"
- "the level of cooperation with authorities"
- "defendant's attitude toward society and respect for the law"
- "[defendant's] prospects for rehabilitation and hope for a future constructive life"

"[defendant's] prospects for rehabilitation and hope for a future constructive life"

People v. Rudolph

21 N.Y.3d 497(2013)

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The importance of a determination as to whether to grant YO treatment or not was highlighted by the Court of Appeals in People v. Rudolph.

The court, overruling People v. McGowen, a 1977 Court of Appeals decision, held that:

"Where a defendant is eligible to be treated as a youthful offender, the sentencing court must determine whether he or she is to be so treated, even where the defendant has failed to ask to be treated as a Youthful Offender or has purported to waive his or her right to make such a request."

"[the] judgment of a court as to which young people have a real likelihood of turning their lives around is just too valuable to both the offender and to the community, to be sacrificed in plea bargaining."

-- People v Rudolph
21 N.Y.3d 497(2013)

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