Erie County Probation RTA Update

Key Component

Presumptive age of juvenile accountability is **raised** for:

- **16-year-olds effective 10/1/18**
- **17-year-olds effective 10/1/19**

Juvenile Delinquent (JD) Definition

- Family Court Act 301.2(1)
  - Age
    - Commencing 10/1/18: a person over age 7 and less than age 17
    - Commencing 10/1/19: a person over age 7 and less than age 18
  - A person who committed an act that would constitute a crime, or a violation, where such violation allegedly occurred in the same transaction or occurrence as the alleged criminal act, if committed by an adult, is either
    - Not criminally responsible by reason of infancy, or
    - The defendant in an action removed from Youth Part to Family Court
- JD cases are heard in Family Court

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Juvenile Offender (JO) Definition

- 13 year old: Murder 2nd, sexually motivated felony (PL 130.91)
- 14 or 15 year old: Murder 2nd or attempt, kidnapping 1st or attempt, arson 1st or 2nd, assault 1st, manslaughter 1st, rape 1st, criminal sexual act 1st, aggravated sexual abuse 1st, burglary 1st or 2nd, robbery 1st or 2nd, weapon possession 3rd on school grounds (PL 256.03), sexually motivated felony (PL 130.91)
- Cases will be initiated in Youth Part, subject to removal to Family Court

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Adolescent Offender (AO) Definition

- A person charged with a felony
  - Committed on/after 10/1/18 when s/he was age 16, or
  - Committed on/after 10/1/19 when s/he was age 16 or 17
- AOs will appear in Youth Part
- Youth Part may remove case to Family court
  - Upon removal/transfer to Family Court, they become JDs and may be sent to Probation for Adjustment Services

Probation Primary Roles

OPERATIONS

- Provides Adjustment Services to youth issued a Family Court Appearance Ticket or removed from Youth Part for adjustment
- Probation will offer Voluntary Services and Assessments to all AOs and JOs
- Probation will provide Release Under Supervision Services for eligible AOs and JOs
- Provide supervision to the JD Intake population regardless of age
- Probation will provide Pre-Dispositional Supervision for all JDs including 16 and 17 year olds

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Youth Part

- Exclusive jurisdiction over all AO and JO felonies except where later removed to Family Court
- Created as part of the superior court
- Specially trained Family Court Judge presides
- Youth Part will not hear the following:
  - Violations stay in local criminal court: Unless part of the same activity as the alleged felony
  - Misdemeanors unless accompanied by felony charges

Misdemeanors

Family Court will hear JD misdemeanor cases

- Exception for VTL misdemeanors
- Respondents are JDs
- FCA applies, including procedures for adjustment and confidential records

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Felonies

AO and JO Felony cases will start in Youth Part

- Some will be removed to Family Court
- Youth Part will handle the rest through Trial and Sentencing

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Voluntary Services and Release

- AOs and JOs may **voluntarily** participate in assessments and services provided by Probation while case is in the Youth Part. Services will continue if removed to Family Court or Probation for adjustment services.
- Detained AOs and JOs may be released to Probation on Pre-Trial Services as determined by the Youth Part Judge.
- Presumption against holding AOs in custody who are not charged with Class A felonies (except controlled substances) or Violent crimes[CPL 722.23(1)(f)].

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Youth Part Removal to FC

Adolescent Offenders

All matters shall be transferred to Family Court after arraignment, unless

1. DA brings a motion to prevent transfer and Court finds that offense should not be removed, or
2. Youth is charged with one of the following
    a. Additional steps apply
        i. Class A felonies (except controlled substances, which should be transferred)
        ii. Violent felonies
    b. VTL (cannot be removed)
    c. JO (different standard applies)

Youth Part Removal to FC

Adolescent Offenders (Cont.)

Class A Felonies and Violent Felonies may be removed to Family Court if:

1. DA requests removal, AND
2. Court finds removal to be in the interests of justice [CPL 722.21(5)]

Youth Part Removal to FC

Adolescent Offenders (Cont.)

Charge of murder 2nd, rape 1st, sexual act 1st, armed felony may be removed if:

1. DA requests removal, AND
2. Court finds removal to be in the interests of justice, AND
3. One or more of the following:
   a. Mitigating circumstances that bear directly upon manner in which crime was committed
   b. Defendant was not sole participant in crime and defendant's role was minor (though not so minor as to constitute a defense)
   c. Possible deficiencies in proof of the crime

Youth Part Removal to FC

Adolescent Offenders (Cont.)

- Once Court orders removal, all further proceedings must occur in Family Court
- If charges are reduced such that the highest remaining charge would be removable, Court shall notify the parties and direct that the matter proceed accordingly [CPL 722.23(3)]

Youth Part Removal to FC

Juvenile Offenders

Decision on Removal Motion:

- Court **may** grant removal if it is in the "interests of justice" [CPL 722.2]
- If DA is moving party, Court **shall** remove if removal is in the "interests of justice" [CPL 722.22(1)(a)]

Family Court

Existing JD laws will apply to youth whose cases are removed to Family Court

- Adjustment Services by Probation
- Prosecutor transitions from District Attorney to Presentment Agency (County Attorney)
- Court may impose conditions of release or detention
- Dispositional options same as JD proceedings
- No permanent criminal record

Family Court Disposition

- JDs will be granted an Order of Disposition
- Victim Impact Statement [FCA 350.3; 350.4]
  - Victims shall have the right to make a statement to be considered in disposition in all JD cases
  - Timeframe
    - Victim to notify court 10+ days prior to dispositional hearing
    - Court to send Respondent notice 7+ days prior to hearing
  - Victim shall not be made aware of disposition

Family Court Disposition

- Placements: age limitations increased
  - Designated felonies [FCA 353.5]
    - Act committed before age 16 – may extend up to age 21 without consent
    - Act committed after turned 16 – may extend up to age 23 without consent
  - All other crimes [FCA 355.5]
    - Act committed before age 16 – may extend up to age 18 without consent, or age 21 with consent
    - If act committed after turned 16 – may extend up to age 21 without consent, or age 23 with consent
- No change to dispositions other than placements, including durations

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Youth Part Sentencing/Disposition

Adolescent Offender [PL 60.10-a]

- Court shall grant Defendant a sentence authorized for a person who committed the offense at age 18 or older
- Court shall consider Defendant's age in exercising discretion at sentencing

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Youth Part Sentencing/Disposition

Juvenile Offender [PL 60.10]

- Law is unchanged
- Court shall sentence JO to imprisonment pursuant to PL 70.05 or sentence JO upon a YO finding, pursuant to PL 60.02

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Youth Part Sentencing/Disposition

Youthful Offender [PL 60.02]

- AO or JO may be eligible for YO status

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Facilities

- No 16- or 17-year-old will be sentenced to or detained in a facility with adults [Exec Law 502(3)(4)]

- JDs: Youth whose cases are heard in Family Court may be detained or placed in OCFS-operated, OCFS-licensed, or ACS facilities (including Close to Home) (same as current JD law) [FCA 304.1]

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Facilities (Con't)

YOs/AOs/JOs

- AOs detained pre-trial will be held in a specialized secure juvenile detention center for older youth
- Judges have discretion to order AOs or JOs sentenced to less than 1 year to serve their sentence in a specialized juvenile detention center for older youth
- AOs who are sentenced to state imprisonment will be placed in an AO facility
- OCFS and Corrections Dept. shall provide discharge plans for JOs and AOs released to parole or post-release supervision
- Plans shall include services designed to address youth's needs upon re-entry and promote public safety

Sealing of Record

Anyone convicted of an eligible offense may seek to have his/her record sealed after 10 years from date of imposition of sentence or discharge from incarceration

- Violent felonies, sex offenses, and Class A felonies are not eligible
- Only available for people with no more than 2 convictions