



**NEW YORK
CITY BAR**

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT ON LEGISLATION BY THE JUVENILE JUSTICE COMMITTEE
PROPOSING NEW LEGISLATION AND OPPOSING PENDING LEGISLATION
REGARDING YOUTHFUL OFFENDERS**

A.8191

M. of A. Boyle

AN ACT to amend the criminal procedure law, in relation to youthful offender status and to repeal subdivision 3 of section 720.10 of such law relating thereto.

A.3975

M. of A. Mayersohn

AN ACT to amend the criminal procedure law, in relation to eligibility for youthful offender treatment.

S.4675

Sen. Young

AN ACT to amend the criminal procedure law, in relation to eligibility for youthful offender status.

THESE BILLS ARE DISAPPROVED

The Committee on Juvenile Justice of the New York City Bar Association (the “Association”) respectfully submits this report to (1) propose new legislation which would grant judges more discretion in awarding Youthful Offender status to juvenile offenders, and (2) oppose legislation currently pending in the State Senate and State Assembly which would limit the discretion of judges to confer Youthful Offender status on teenagers who commit criminal acts.

The Association is an organization of over 23,000 lawyers and judges dedicated to improving the administration of justice. The members of the Juvenile Justice Committee include attorneys, academics and judges who come together to address issues related to the processing, adjudication, placement and incarceration of juveniles in the criminal justice system.

Background and Summary of the Committee’s Proposed Legislation Amending CPL § 720.10

CPL § 720.10 gives judges the discretion to confer Youthful Offender status on defendants aged 14 through 18, who have been found to have committed criminal acts. Once a

teenager is adjudicated to be a Youthful Offender the youth is removed from the adult justice system, so that he/she is exempted from certain mandatory prison sentences and shielded from the stigma that accompanies a criminal conviction. The statute, however, bars teenagers who have been convicted of (i) an armed felony (CPL § 1.20 [41] [a-b]), (ii) rape in the first degree, (iii) criminal sexual act in the first degree, or (iv) aggravated sexual abuse from being adjudicated a youthful offender, unless the court finds certain mitigating circumstances (CPL § 720.10 [2][a][ii][iii] and [3]). Barred altogether from receiving Youthful Offender status are youths who are convicted of a class A-I or A-II felony, youths who have previously been adjudicated a Youthful Offender following a felony conviction, and youths who have previously been convicted and sentenced for a felony.

In order to give more Youthful Offenders the opportunity to rehabilitate and lead successful lives, the Committee's proposed bill would delete those subdivisions of the Youthful Offender statute that require a judge to find mitigating circumstances before conferring Juvenile Offender status on youth convicted of armed felony, leaving only sex crimes as requiring a finding of mitigating circumstances. The proposed bill makes no changes with respect to those crimes that are barred from Youthful Offender consideration.

A proposed bill is attached as Appendix A.

Summary of Pending Legislation that is Disapproved

For the same reasons that the Committee is proposing new legislation expanding judicial discretion to award Youthful Offender status, the Committee also opposes several pending bills aiming to do just the opposite by reducing judicial discretion to award Youthful Offender status. Those bills (referred to in this memo as the "YO Bills") are:

- A.8191, which would add to the list of felonies that disqualify a teen from being designated a Youthful Offender, and repeal that section of the current statute that gives judges discretion to find mitigating circumstances.
- A.3975, which would bar a teenager from being designated a Youthful Offender if he/she has two juvenile delinquency felony convictions, unless the mitigating circumstances in the current law are present.
- S.4675, which would add to the list of disqualifying felonies, while maintaining a judge's ability to find mitigating circumstances.

Rationale for Proposed Legislation and Opposition to Pending Bills

By limiting the discretion of judges to give violent teens a chance at reform, the YO Bills conflict with the widespread understanding that teenagers lack the tools for decision making and impulse control that older defendants are expected to have. The rationale for treating troubled teenagers more leniently than adults was expressed by Justice Anthony Kennedy in Roper v. Simmons, 543 US 551, which outlawed the death penalty for juveniles. "[A]s any parent knows," wrote Justice Kennedy, teenagers are more likely than adults to demonstrate "a lack of maturity and an underdeveloped sense of responsibility...qualities [that] often result in impetuous and ill-considered actions and decisions." Id. at 569 (citations omitted). This rationale was

reiterated and expanded upon in the Court's very recent decision to ban a sentence of life without parole for juveniles who commit non-homicide crimes. See Graham v. Florida, 560 U.S. ___ (2010).

Brain scan technology shows that the areas of the brain associated with reasoning and impulse control develop well into a person's twenties.¹ According to Peter Ash of Emory University, violent behavior usually peaks during adolescence, starting at age 16, but two-thirds to three-quarters of violent teens grow out of their behavior as "[t]hey get more self-controlled."²

This scientific research undermines the notion that youth convicted of violent or multiple felonies are incapable of changing their behavior. If the discretion of judges to confer Youthful Offender status is restricted in accordance with the proposed bills, many teenagers capable of reforming their behavior would almost surely have to face lengthy prison sentences and the lifelong stigma of a criminal finding. The bills would also make it more likely that a teen with a treatable mental illness that went undiagnosed when they were in the juvenile system would be made ineligible to receive Youthful Offender status, because of behavior linked to their newly discovered disability.

While mandatory sentencing guidelines ensure that teens treated as felons squander the rest of their youth in prison, teenagers given Youthful Offender status have the opportunity to spend their most important growth years in school or learning job skills. The repercussions of a felony sentence also include restrictions on eligibility for public housing, as well as eligibility for certain job licenses.

Moreover, the YO Bills move New York away from the much-needed recommendations sought by leading experts in the field of juvenile justice. Prompted by a Department of Justice report which found "that New York's juvenile justice system [was] failing in its mission to nurture and care for young people in state custody," Governor Paterson launched the Task Force on Transforming Juvenile Justice to shape a new path for juvenile justice in New York. The Task Force spent months researching policies that would save money, minimize recidivism, protect families, and protect public safety. While the Report the Task Force issued mainly targeted juvenile delinquent -- rather than juvenile offender -- status, many themes remain constant. For example, the Report cited data indicating that juveniles exposed to prolonged institutionalization were far more likely to recidivate.³ Thus, rather than making New York safer, the YO Bills would turn troubled youths in need of help into hardened criminals. Indeed, the Task Force recommended that the highest risk offenders be offered the most resources.⁴ The YO Bills would also create numerous collateral consequences. Without Youthful Offender

¹ Beatrice Luna, Ph.D., "Brain and Cognitive Process Underlying Cognitive Control of Behavior in Adolescence," University of Pittsburgh, Oct. 2005.

² "Experts Link Teen Brains' Immaturity, Juvenile Crime," USA Today, December 2, 2007.

³ *Charting a New Course: A Blueprint for Transforming Juvenile Justice in New York State*, A Report of Governor David Paterson's Task Force on Transforming Juvenile Justice (hereinafter "Task Force Report"), December 2009, citing Edward J. Latessa and Christopher Lowenkamp, "What Works in Reducing Recidivism?," University of St. Thomas Law Journal 3, no. 3 (2006) 522-523; Douglas W. Nelson, 2008 KIDS COUNT Essay and Data Brief: A Road Map for Juvenile Justice Reform (Baltimore, MD: The Annie E. Casey Foundation, 2008): 10-11.

⁴ Task Force Report, citing Mark W. Lipsey, "The Primary Factors that Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview," 4 *Victims and Offenders* 2 (2009).

status, adolescents will lose valuable educational and vocational opportunities, as their records will be open to future employers.⁵

Finally, the Task Force highlighted the importance of “the discretionary role of judges in making placement decisions.” Given the experience that Youth Part judges have in dealing with violent teens, and their knowledge of the services available to troubled youth, the legislature should defer to the expertise of Youth Part judges to identify adolescents who are capable of reform and to maximize their potential to become law abiding citizens. The Committee’s proposed legislation would do exactly that, by allowing judges to award Youthful Offender status to youth who commit armed felonies without being restricted by narrow categories of mitigating circumstances. The judges are in the best position to examine a child’s history, behavior and potential for reform. New York State residents are best protected when the number of violent offenders is minimized. Thus, we should not mandate sentencing which only serves to increase recidivism, and, by extension, the number of dangerous and violent acts in our communities and neighborhoods.

For these reasons, the Committee opposes the enactment of the YO Bills - A.8191, A.3975 and S.4675 – and supports the enactment of legislation which would remove “armed felony” from the list of crimes that require a finding of mitigating circumstances before a judge can award Youthful Offender status.

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⁵ Task Force Report, citing Theresa A. Hughes, “Juvenile Delinquent Rehabilitation: Placement of Juveniles Beyond Their Communities as a Detriment to Inner City Youths,” 36 *New England Law Review* 159-60; 172-73 (2008).

Appendix A

§ 720.10 Youthful offender procedure; definition of terms.

As used in this article, the following terms have the following meanings:

1. "Youth" means a person charged with a crime alleged to have been committed when he was at least sixteen years old and less than nineteen years old or a person charged with being a juvenile offender as defined in subdivision forty-two of section 1.20 of this chapter.

2. "Eligible youth" means a youth who is eligible to be found a youthful offender. Every youth is so eligible unless:

(a) the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, ~~or (ii) an armed felony as defined in subdivision forty one of section 1.20, except as provided in subdivision three,~~ or (iii) rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse, except as provided in subdivision three, or

(b) such youth has previously been convicted and sentenced for a felony, or

(c) such youth has previously been adjudicated a youthful offender following conviction of a felony or has been adjudicated on or after September first, nineteen hundred seventy-eight a juvenile delinquent who committed a designated felony act as defined in the family court act.

3. Notwithstanding the provisions of subdivision two, a youth who has been convicted of ~~an armed felony offense or of~~ rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse is an eligible youth if the court determines that one or more of the following factors exist: (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. Where the court determines that the eligible youth is a youthful offender, the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded to the state division of criminal justice services, to be kept in accordance with the provisions of subdivision three of section eight hundred thirty-seven-a of the executive law.

4. "Youthful offender finding" means a finding, substituted for the conviction of an eligible youth, pursuant to a determination that the eligible youth is a youthful offender.

5. "Youthful offender sentence" means the sentence imposed upon a youthful offender finding.

6. "Youthful offender adjudication". A youthful offender adjudication is comprised of a youthful offender finding and the youthful offender sentence imposed thereon and is completed by imposition and entry of the youthful offender sentence.