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**REPORT BY THE JUVENILE JUSTICE COMMITTEE
PROPOSING NEW LEGISLATION REGARDING YOUTHFUL OFFENDERS**

The Committee on Juvenile Justice of the New York City Bar Association (the “Association”) respectfully submits this report to propose new legislation which would grant judges more discretion in awarding Youthful Offender status to juvenile offenders.

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 and academics 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 Youthful 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.

Rationale for Proposed Legislation

Limiting the discretion of judges to give violent teens a chance at reform conflicts 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 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, many teenagers capable of reforming their behavior would almost surely have to face lengthy prison sentences and the lifelong stigma of a criminal finding. Limiting the judge’s discretion 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.

For all of these reasons, the Committee’s proposed bill expands the judge’s discretion to confer YO status. This approach aligns with the recommendations of 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,” former Governor Paterson launched the Task Force on Transforming Juvenile Justice to shape a new path for juvenile justice in New York.³ The Task Force spent months researching policies that would save money, minimize recidivism, protect families, and protect public safety. While the Task Force Report mainly targeted juvenile delinquent -- rather than juvenile offender -- status, many themes remain constant. For example, the Report cited data indicating that

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 The Committee applauds Governor Cuomo’s support for many of the Task Force recommendations to address juvenile crime in an appropriate rehabilitative way.

juveniles exposed to prolonged institutionalization were far more likely to recidivate.⁴ Indeed, the Task Force recommended that the highest risk offenders be offered the most resources.⁵ Without Youthful Offender status, adolescents will lose valuable educational and vocational opportunities, as their records will be open to future employers.⁶

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 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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⁴ *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.

⁵ 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).

⁶ 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).