



**NEW YORK
CITY BAR**

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**REPORT ON LEGISLATION BY THE
CRIMINAL JUSTICE OPERATIONS COMMITTEE**

**A.1794
S.6524**

**M of A. O'Donnell
Sen. Montgomery**

AN ACT to amend the criminal procedure law, in relation to increasing the age of a person deemed a youth for youthful offender status.¹

THIS BILL IS APPROVED

The New York City Bar Association is a private, non-profit organization of more than 24,000 lawyers, law students and law professors, and is one of the oldest bar association in the United States. This report is submitted by the Association's Criminal Justice Operations Committee in support of A.1794/S.6524, which would amend the criminal procedure law to increase the age of eligibility for youthful offender status to age 21. C.P.L. § 720.10(1).²

YOUTHFUL OFFENDER STATUS

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

¹The proposed legislation provides:

Section 1. Subdivision 1 of section 720.10 of the criminal procedure law, as amended by chapter 411 of the laws of 1979, is amended to read as follows:

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] TWENTY-TWO years old or a person charged with being a juvenile offender as defined in subdivision forty-two of section 1.20 of this chapter.

Section 2. This act shall take effect on the sixtieth day after it shall have become a law.

²There are number of legislative proposals regarding raising the age at which a person can be charged as an adult. This bill does not impact any future legislation that would raise the age of criminal responsibility from the current age of 16. In fact, it would work naturally with any "raise the age" legislation by raising the age of "Youthful Offender" eligibility in adult court for anyone 21 and under. This will enhance and complement any legislation affecting 16 and 17 year olds.

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.

THE LEGISLATION

The proposed legislation raises the age of eligibility for youthful offender adjudication from 18 to 21 years old but does not otherwise seek to amend eligibility criteria or expand the protections of youthful offender status. As currently provided by law, an eligible youth who is adjudicated a youthful offender does not have a criminal conviction and can avoid the collateral consequences and stigma of a criminal record. Moreover, adjudication as a youthful offender for a felony allows the court to impose either a probationary sentence, or a period of incarceration substantially lower than would otherwise be required.³

ANALYSIS

Because young people are still maturing and do not have fully-developed capacities for decision making, they should be held to a different standard when they commit a crime. Hence, the New York State Legislature has already granted judges discretion to grant youthful offender status to young people up to, and including, age 18. Youthful offender adjudication “provides an avenue for the court to exercise discretion upon conviction of certain young offenders to a) avoid branding a youth with the lifelong stigma of a criminal conviction; and b) eschew imposition of certain mandatory sentences of imprisonment.”⁴ Chief among the stigmas of a criminal conviction are the numerous collateral consequences that arise from a conviction. These consequences can include: a bar to public housing, ineligibility to serve on a jury, ineligibility for student loans, ineligibility for certain professional licenses and deportation of those who are in the United States as legal permanent resident aliens. An adjudication as a youthful offender can avoid the incurring of these collateral consequences.

While youthful offender status is not currently available to young people ages 19 to 21, recent neurological research has shown that brain development continues through an individual’s

³ The Criminal Procedure Law provides that the court must sentence a youthful offender “pursuant to section 60.02 of the penal law.” CPL § 720.20(3). Penal Law § 60.02, which sets out the authorized dispositions for youth offenders, requires that, for a felony, the court must impose a sentence authorized for a class E felony. The maximum prison sentence for a class E felony is an indeterminate sentence of from one and one-third to four years of incarceration.

⁴ Peter Preiser, Practice Commentary, Criminal Procedure Law § 720.10 (McKinney’s 2011). Moreover, giving judges the discretion to impose shorter sentences or alternative sentencing options may reduce recidivism because juveniles exposed to prolonged institutionalization are far more likely to recidivate. “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,” December 2009, citing Edward J. Latessa and Christopher Lowenkamp, “What Works in Reducing Recidivism?”, University of St. Thomas Law Journal 3, no. 3 (2006) at 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) at 10 – 11.

early twenties and that the abilities to control impulses and make mature judgments are among the last to develop. The New York Times reported that a National Institute of Mental Health study found that the brain develops until age 25, and the most significant changes take place in the prefrontal cortex and cerebellum – the regions involved in emotional control and higher-order cognitive function.⁵ Dr. Ruben C. Gur, Director of the Brain Behavior Laboratory of the University of Pennsylvania, states:

The evidence now is strong that the brain does not cease to mature until the early 20's in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable. . . Indeed, age 21 or 22 would be closer to the 'biological' age of maturity.⁶

Finally, describing the neurological landscape for adolescents ending at about age 20, Dr. Laurence Steinberg of Princeton University writes:

In sum, risk taking declines between adolescence and adulthood for two, and perhaps, three reasons. First, the maturation of the cognitive control system, as evidenced by structural and functional changes in the prefrontal cortex, strengthens individuals' abilities to engage in longer-term planning and inhibit impulsive behavior. Second, the maturation of connections across cortical areas and between cortical and subcortical regions facilitates the coordination of cognition and affect, which permits individuals to better modulate socially and emotionally aroused inclinations with deliberative reasoning and, conversely, to modulate excessively deliberative decision-making with social and emotional information. Finally, there may be developmental changes in patterns of neurotransmission after adolescence that change reward salience and reward-seeking, but this is a topic that requires further behavioral and neurobiological research before saying anything definitive.⁷

As recognized in the memo submitted in support of the proposed legislation,⁸ neurological researchers have reached a consensus – adolescence ends in one's early twenties. Before then,

⁵ Robin Martinez Henig, "What Is it About 20-Somethings?" New York Times, August 18, 2010.

⁶ Adam Ortiz, "Cruel and Unusual Punishment: The Juvenile Death Penalty: Adolescence, Brain Development and Legal Culpability," ABA Juv. Just. Ctr. 1, 2 (2004), at 2 (quoting Petition for Writ of Certiorari, Patterson v. Texas, 541 U.S. 1038 (No. 03-10348) (Declaration of Ruben C. Gur)).

⁷ Laurence Steinberg, "A Social Neuroscience Perspective on Adolescent Risk-Taking," Dev. Rev. 2008 March; 28(1): 78-106.

⁸ See Memo in Support of A. 10267, an identical bill introduced on May 16, 2012, in prior legislative session.

during adolescence, the brain continues to undergo profound changes that impact the ways in which young people process and react to information.⁹

The Supreme Court, in a series of opinions concerning the appropriate punishment for juvenile offenders, has looked to social science and neurological studies on the brain development of juveniles in determining whether the Eighth Amendment prohibits extraordinary punishment of juveniles. Although the social science relied upon by the Court focused on the brain development of teenagers, and not older adolescents, the Court's receptivity to relying on social science in determining appropriate punishment in the realm of criminal justice is instructive. In Roper v. Simmons,¹⁰ the Supreme Court considered whether imposing the death penalty for juvenile offenders violated the Eighth Amendment's prohibition against cruel and unusual punishment. The Court recognized three general differences between juveniles and adults: (i) that juveniles lack maturity and have an underdeveloped sense of responsibility; (ii) that juveniles are more vulnerable and susceptible to negative influence and outside pressure, including peer pressure; and (iii) that the character of a juvenile is not as well-formed as the character of an adult. In holding that imposing the death penalty for juvenile offenders violates the Eighth Amendment, the Court observed, "From a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."¹¹ The Court expressed similar views in Graham v. Florida,¹² where the Court held that the Eighth Amendment prohibits sentencing juveniles to life without parole for a non-homicide crime. In Graham, the Court specifically referenced developments in psychology and brain science, which show fundamental differences between juvenile and adult minds, and noted that parts of the brain involved in behavior control continue to mature through late adolescence.

This same reasoning underpinned the Court's recent decision in Miller v. Alabama,¹³ in which the Court held that the Eighth Amendment forbids a sentencing scheme requiring mandatory sentences of life without the possibility of parole for juvenile homicide offenders. In its opinion, the Court stressed that its opinion rested on "not only common sense – on what 'any parent knows' – but on science and social science as well."¹⁴

⁹ Neelum Arya, Campaign for Youth Justice, "State Trends: Legislative Victories from 2005 to 2010 Removing Youth from the Adult Criminal Justice System," at page 9 (2011), *available at* http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf (last visited April 10, 2013).

¹⁰ 543 U.S. 551 (2005).

¹¹ 543 U.S. at 570.

¹² 130 S.Ct. 2011 (2010).

¹³ 132 S.Ct. 2455 (2012).

¹⁴ 132 S.Ct at 2464, citing to various social science studies.

RECOMMENDATION

Given that there is a consensus among social and neurological scientists that the brain is not fully developed until a person reaches his twenties, and that the Supreme Court has rendered this same science the appropriate measure of cruel and unusual punishment, New York must permit the Judiciary discretion to bestow youthful offender status on young people through age 21. For this reason, the New York City Bar Association's Criminal Justice Operations Committee approves of the proposed legislation to raise the youthful offender eligibility age from 18 to 21.

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