REPORT ON LEGISLATION BY THE CIVIL RIGHTS COMMITTEE, CORRECTIONS & COMMUNITY REENTRY COMMITTEE, COUNCIL ON CHILDREN, CRIMINAL COURTS COMMITTEE, FAMILY COURT & FAMILY LAW COMMITTEE, JUVENILE JUSTICE COMMITTEE, AND MASS INCARCERATION TASK FORCE

A.5293	**M. of A. Walker**
S.4330	**Sen. Myrie**

AN ACT to amend the criminal procedure law and the penal law, in relation to granting certain individuals youthful offender status; to add a new category of individuals eligible for young adult status; and to repeal certain provisions of the criminal procedure law relating thereto.

Youth Justice & Opportunities Act

THIS BILL IS APPROVED

I. INTRODUCTION

The New York City Bar Association, by and through its Civil Rights Committee, Corrections and Community Reentry Committee, Council on Children, Criminal Courts Committee, Family Court and Family Law Committee, Juvenile Justice Committee, and Mass Incarceration Task Force, urge passage of the Youth Justice and Opportunities Act ("YJOA"), A.5293 (Walker)/S.4330 (Myrie). The YJOA amends the penal law and criminal procedure law in light of the scientific consensus that most young people, including young adults, age out of crime if given the opportunity to do so, and that community-based interventions are more effective at deterring and reducing youth offending than adult incarceration.

The bill breaks new ground by granting judges broader discretion to employ age-appropriate alternative sentencing for those under age 26 facing the criminal legal system. Judges will be able to require individuals to both take responsibility for the commission of their

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

crimes and avoid the civil consequences[1] of criminal convictions and long sentences. This will improve public safety across New York because those who receive alternative sentences will be better positioned to secure jobs, housing, and other necessities for becoming productive members of our society.

The YJOA's proponents recognize that several alternatives to criminal convictions for young people under age 19 already exist. Judges may choose to replace criminal convictions for eligible 14- to 18-year-olds with *youthful offender* adjudications, which are sealed for civil purposes and not treated as convictions under New York's predicate sentencing laws. Since the enactment of New York's Raise the Age law, 16- and 17-year-olds charged with misdemeanors are considered *juvenile delinquents* and tried in Family Court, while 16- and 17-year-olds charged with felonies are considered *adolescent offenders* whose cases will be either removed to Family Court or tried in designated Youth Parts of Supreme Court. The YJOA builds on these existing protections by expanding *youthful offender* eligibility for some 14- to 18-year-olds and creating a new parallel adjudication for 19- to 25-year-olds called *young adult* status.

By expanding eligibility for youthful offenders and creating a new status for emerging adults with similar benefits to youthful offenders, the YJOA updates New York's law to reflect the consensus among medical and mental health professionals that emerging adulthood is a unique developmental period and should receive protections under the law.

In summary, the YJOA would:

- Create a new young adult status for young people ages 19 through 25–offering protections similar to youthful offender status for the emerging adult age group.
- Expand the categories of cases where youthful offender treatment is mandatory rather than discretionary.
- Expand judicial discretion to grant youthful offender status, including the option to grant it more than once for a felony.
- Allow judges the ability to sentence more young people to individualized, age-appropriate alternatives to incarceration.
- Allow judges to waive fees and surcharges for all young people ages 18 through 25.
- Allow young people with conviction records to petition the court to be "re-sentenced" and granted youthful offender or young adult status retroactively.

The Committees recognize that youth affected by New York State's criminal legal system are overwhelmingly Black and Latinx. Black and Latinx youth comprise a substantially larger proportion of arrests than their proportion of the general population, and young people

[1] New York Courts, *Collateral Consequences Basics, available at* https://www.nycourts.gov/courthelp/Criminal/collateralConsequencesBasics.shtml (All websites last accessed on March 13, 2025).

confined in local and state jails and prisons are predominantly Black and Latinx.[2] The barriers created by a criminal conviction and incarceration make it harder for young people to finish school, obtain and keep well-paying jobs, and find stable housing. Young people with adult convictions and experiences of incarceration are also more likely to be re-arrested, and, on average, earn less income over their lifetimes than youth who are not. Because of racial bias in arrest, prosecution, and incarceration, these consequences are harsher for Black, Latinx, and other youth of color.

II. PROBLEMS WITH THE CURRENT STATE OF THE LAW

In 2017, New York State "raised the age" of criminal responsibility. Since the law was fully implemented in 2019, most 16- and 17-year-olds who are arrested have their case heard in Family Court rather than being treated as adults. Yet far too many adolescents and emerging adults still face long prison sentences and the devastating consequences of a criminal conviction.

The current law in New York State allows judges to grant youthful offender ("YO") status to some young people arrested and charged with criminal offenses prior to their 19th birthday. Youthful offender status seals cases so they will not appear on a civil background check and allows judges to sentence young people to age-appropriate, non-jail sentences. However, the current law is limited in three critical ways:

- There are no protections for adolescents and young adults charged with an offense at age 19 and older.
- The current law does not reflect the consensus among researchers that young people continue to mature and change into their mid-20's.
- Judges lack discretion to grant youthful offender status more than once in some cases, even when it would benefit the young person and the community.

The criminal legal system in New York fails to address the unfair consequences on the lives of tens of thousands of young adults aged 18 to 25[3] who are arrested and charged each year, the vast majority of whom are Black and Latinx. Although these young people made up only 10% of the state's population in 2018, they disproportionately represented a quarter of arrests statewide.[4] About one third of these arrests are for felonies, where young people face the risk of long sentences in adult prisons and permanent criminal records.[5]

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[2] Davis, J. and K. Rubin, *Expanding Youth Justice in New York* (2020), at 9-10, *available at* https://static1.squarespace.com/static/5672e21ddf40f3fd5f527d40/t/5f7f29d11b5a1621b0ee765c/1602169299292/Expanding+Youth+Justice+in+New+York.pdf.

[3] In this Committee Report, the terms "young adult" and "emerging adult" are used interchangeably to refer to young people aged 18 through 25 years old.

[4] *Supra* note 2.

[5] *Id.*

One of the most significant ramifications of a criminal conviction is the economic consequence that can put a young person's future at a profound disadvantage even if they never reoffend. The Council of State Governments has found over 1,000 civil consequences of convictions in New York.[6] These repercussions stem from both felony and misdemeanor convictions and affect young people's lives in a wide variety of ways that limit their economic mobility and force them to the periphery of our communities. This includes inhibiting their access to and ability to keep certain jobs, housing, loans, credit, and education.

Even with the enactment of Clean Slate legislation (A.1029/S.211) in 2023, collateral consequences will continue to impact young people during this critical period of opportunity. While Clean Slate requires a waiting period to seal conviction records of 3 years (for misdemeanors) and 8 years (for felonies) following completion of their sentence, YJOA could prevent a young person under 26 from ever having a criminal conviction. Instead, under YJOA, their cases can be sealed at the very time in their lives when they are most likely to be pursuing higher education, beginning their careers, or finding housing independently of their family. And because even sealed cases can turn up in internet searches indefinitely, YJOA allows judges the option to conduct cases that are eligible for post-conviction sealing in private.

III. SUMMARY OF THE LEGISLATION

The Youth Justice and Opportunities Act expands the scope of the youthful offender statute and creates a young adult offender status. The effect of the legislation would be expanded eligibility for non-criminal adjudications, shorter sentences, and automatic record sealing for young people. Importantly, the YJOA also grants judges broader discretion to rely on age-appropriate programs and services, including individualized treatment and other supports, which will be funded by the companion bill the Youth Justice Innovation Fund (A.761 (Solages)/S.643 (Cleare)) if the YJOA is enacted.

First, the YJOA expands the eligibility for youthful offender status by amending the statutory disqualification for armed felony offenses[7] and removing the statutory disqualification for youth who have previously been adjudicated a youthful offender following a felony conviction or who have been adjudicated a juvenile delinquent and found to have committed a designated felony under the Family Court Act. It also expands the list of factors that a judge shall weigh when making the determination as to granting youthful offender status for more serious offenses. This status can vastly improve individuals' trajectories by enabling them to avoid criminal convictions, better positioning them to secure jobs, housing, and other necessities for becoming productive members of our society.

[6] National Inventory of Collateral Consequences of Conviction, results for New York (2023), *available at* https://niccc.nationalreentryresourcecenter.org/consequences.

[7] Under Criminal Procedure Law section 720.10(3), an otherwise eligible youth may still be adjudicated a youthful offender notwithstanding the armed felony offense conviction if the court finds mitigating circumstances that bear directly upon the manner in which the crime was committed, or the defendant's participation was relatively minor.

Second, the YJOA makes youthful offender status automatic for misdemeanor offenses, Class D and E felony offenses, and drug offenses (other than Class A-I and A-II felony drug offenses). Furthermore, the proposed legislation creates the presumption that the court shall grant youthful offender status to eligible youth in all other cases except when the youth is charged with rape in the first degree or aggravated sexual abuse. The proposed legislation places the burden on the district attorney to rebut this presumption relying on a set of factors that include the seriousness of the offense, any mitigating factors, and the history and background of the youth. Under the proposed legislation, youth charged with Class A-I and A-II felonies would remain ineligible for youthful offender status.

Third, the YJOA authorizes court proceedings to be conducted in private in felony cases where a young person is eligible for youthful offender or young adult status even if the judge ultimately does not grant such a status. It clarifies that the court shall not impose any fees for young people adjudicated as juvenile offenders, youthful offenders, or receiving young adult status. It also amends subdivision 7 of Criminal Procedure Law section 340.40 to provide for a jury trial for any youth eligible for youthful offender status unless the eligible youth has waived his or her jury trial pursuant to CPL 320.10.

Fourth, the YJOA amends the criminal procedure law to add a new Article 721, young adult status. Under this article, "young adult" is defined as a person charged with a crime alleged to have been committed when he or she was at least 19 and less than 26. The other eligibility criteria for young adult status mirror those for youthful offender status outlined in the version of criminal procedure law 720.10 as amended by YJOA, except that under the proposed legislation young adult status is only automatic for misdemeanor offenses. The effect of young adult adjudication mirrors the effect of youthful offender adjudication outlined in criminal procedure law 720.20(3) (sentencing) and 720.35 (records). For young people adjudicated as youthful offenders or young adult status, the provision of Penal Law 60.02(2) prohibiting conditional or unconditional discharge for drug-related offenses is repealed under the proposed legislation.

The prosecution would be able to challenge the presumption that a person be granted youthful offender or young adult status up to seven days before sentencing. Using the same factors that the court considers, the prosecution would have to prove with clear and convincing evidence that the interest of justice would not be served by granting youthful offender or young adult status.

Finally, the bill would cap the maximum sentence at four years and seal all records upon notice of adjudication for young adult status (as the existing law already does for youthful offender status). It would allow judges to waive all fees and surcharges for young people up to 26,[8] and allow for youthful offender and young adult status to be granted more than once for a felony conviction. It would also work retroactively to allow people with prior convictions that

[8] For a summary of the impact of fees on system-involved youth, see Jessica Feierman, Naomi E. S. Goldstein, Emily Haney-Caron, & Jaymes Fairfax-Columbo, *Debtor's Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System* (Juvenile Law Center, 2016), https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf.

would have qualified to be granted youthful offender or young adult status and/or apply for resentencing. Neither of these adjudications would prevent the person implicated from serving in public office, public employment, or receiving any license granted by public authority in the future. Identical to youthful offender status, young adult status would limit the parties able to access the records in any capacity to the Commissioner of Mental Health or Commissioner of Developmental Disabilities where Mental Hygiene law requires, or a designated person at the school in which the young person attends to ensure a safe and successful reentry.

IV. BASIS FOR SUPPORT

A. A Consensus Among Researchers About Youth Development Supports Expanding Age-Based Projections Like Those Created by the YJOA

Psychological and neuroscience research over decades consistently shows that adolescent development continues well past age 18, with brain development and psychosocial development not completed until the mid-20s.[9] Because their brains are still developing, young adults–such as the youth who will be impacted by the YJOA–are still honing their decision-making skills, including weighing risks and rewards. Because the adaptive purpose of the brain during this time is to explore and to build lasting relationships, emerging adults often behave more impulsively, take more risks, and are more susceptible to peer pressure compared to adults generally.[10] Brain regions responsible for reward-seeking, motivation, and emotion develop quickly during the adolescent years, making adolescents and young adults primed to focus on possible rewards–and discount possible negative outcomes–of risky behaviors.[11] During this same period, the prefrontal cortex, the area of the brain responsible for behavioral control, decision making, inhibiting impulses, is continuing to develop, but does not complete development until the mid-20s.[12]

Because of this unique developmental profile, young adults are primed to act in ways that can be risky without considering the consequences and without being able to fully think through decisions in advance. This is especially true for decision-making in what neuroscientists call "hot cognition," or decision-making in an emotionally charged, high stakes context. Emerging adults have a greater tendency to take risks in a state of hot cognition compared to fully grown adults.[13] In practice, this means that imposing severe criminal sanctions is unlikely to have any deterrent impact: young adults are unlikely to think about

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[9] *See generally* Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 Victims & Offenders 428 (2012), *available at* https://www.tandfonline.com/doi/full/10.1080/15564886.2012.713901.

[10] *Id.*

[11] *See generally* Laurence Steinberg, *The Science of Adolescent Brain Development and Its Implications for Adolescent Rights and Responsibilities*, *in* Hum. Rts. & Adolescence 63, 67, 74 (2014), *available at* https://www.degruyter.com/document/doi/10.9783/9780812290110.59/pdf?licenseType=restricted&srsltid=AfmBOooTomS5ZbZtr7y1FVe2RPncUjlnihimi0CvhqgQ4Sa-Not8dBbW.

[12] *Id.*

[13] Steinberg, L. (2007). Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science. Current Directions in Psychological Science, 16(2), 55–59.

these possible consequences or weigh them heavily before acting, especially in a situation that is emotionally charged or where peer approval is at stake.

Furthermore, research shows that severe criminal sanctions are unnecessary; most young adults naturally age out of delinquent or criminal behavior as their brains mature and they complete development.[14] Indeed, harsh criminal sanctions can actually be harmful; research shows that severe system responses can impede natural psychosocial development and can actually *increase* the chance that a young person will recidivate.[15] The YJOA is consistent with this science, reflecting what we know about adolescent and young adult development and using best practices to support youth in desisting from crime. This approach helps to increase public safety because it enables greater investment in communities rather than youth incarceration. The YJOA's companion bill will also help to fund individualized treatment and other supports that further stabilize communities and make them healthier and safer.

B. In NYC, the Number of Vulnerable Youth Has Grown Since the COVID-19 Pandemic; More are Disconnected from School and Work. The YJOA is Critical Now

Since 2018, the number of New York City youth who are disconnected from both school and work doubled from one in eight to one in four.[16] As the City's Disconnected Youth Taskforce Report found, "[t]he experience of disconnection often has long-term negative effects on an individual's employment prospects, earning power, and health. It also carries a high cost for their families and communities. Research shows that disconnection during late adolescence or young adulthood leads to significantly lower earnings and rates of home ownership well into adulthood, as well as a range of worse health outcomes."[17] These are significant individual and collective risks that undermine wellbeing.

Incarceration and criminal records only serve to further disconnect youth, and we need legislation designed to help young adults reconnect and re-engage with their communities. By giving youth opportunities to access services and programs that meet their needs, connecting them with resources, and supporting their return to their communities, the YJOA can be expected to increase public safety by ensuring young people's developmental trajectories are

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[14] See Michael Rocque, *The Lost Concept: The (Re)Emerging Link Between Maturation and Desistance from Crime*, 15 Criminology & Crim. Just. 340 (2015) for a discussion of the role of development in desistance from crime. A synthesis across 15 large-scale research studies on crime desistance shows desistance occurring in the late 20s to early 30s for most offenders. Elaine Eggleston Doherty & Bianca E. Bersani, *Mapping the Age of Official Desistance for Adult Offenders: Implications for Research and Policy,* 4 J. Dev. & Life-Course Criminology 516 (2018).

[15] *E.g.*, Julia Dmitrieva, Kathryn C. Monahan, Elizabeth Cauffman, & Laurence Steinberg, *Arrested Development: The Effects of Incarceration on the Development of Psychosocial Maturity,* 24 Dev. & Psychopathology 1073 (2012).

[16] Disconnected Youth Task Force, Connecting Our Future: 2020 Disconnected Youth Task Force Report (2020) at 4, *available at* https://www.nyc.gov/assets/youthemployment/downloads/pdf/dytf-connecting-our-future-report.pdf.

[17] *Id.* at 4.

not derailed by permanent criminal records and unnecessary incarceration. As a result, this bill can be conceptualized not just as a criminal justice reform bill, but also as legislation that strengthens public safety, employment, economic mobility, and public health. In light of the structural racism inherent to the criminal legal system which results in disproportionate impacts on youth of color and especially Black youth,[18] the YJOA is a crucial step toward racial justice in New York.

C. The YJOA is an Important Strategy to Reduce the Number of People in NYC's Jails

The YJOA would also provide a valuable tool toward reducing the number of young adults in New York City's jails–bringing the City closer to its plan for closing Rikers Island. Young adults are over-represented within the City's jail system, with over 1,200 young people aged 18 through 25 held on Rikers on any given day as of January 2025.[19] While we cannot estimate the number of young adults who would become eligible for alternatives to incarceration if YJOA were enacted, the law's provisions that increase opportunities for non-incarceratory sentencing and programmatic alternatives to criminal sanctions would certainly help to reduce the number of youth in the City's custody.

This is especially urgent in light of the conditions of confinement facing young adults in the City's jails. According to a report from the Columbia University Justice Lab in 2022, "[e]merging adults are made victims of harm and violence by staff at Rikers Island at extremely high rates."[20] The same report found that "emerging adults at Rikers Island are frequently forced into situations of extreme isolation, experiencing numerous 'lockdowns' or 'lock-ins' that often extend for multiple days. Social isolation and lack of stimuli have been shown to be extremely detrimental to young people, and . . . is compounded by the absence of appropriate programming and support provided to young people and insufficient recreation time."[21]

V. CONCLUSION

The Youth Justice and Opportunities Act provides New York with an opportunity to bring its criminal legal system in line with other areas of law that have shifted to respond to the unique experience of emerging adulthood, including the expansion of foster care and high

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[18] *See, e.g.,* Megan C. Kurlychek & Brian D. Johnson, *Cumulative Disadvantage in the American Criminal Justice System,* 2 Ann. Rev. Criminology 291 (2019), *available at* https://www.annualreviews.org/content/journals/10.1146/annurev-criminol-011518-024815, and Emily Haney-Caron & Erika Fountain, *Young, Black, and Wrongfully Charged: A Cumulative Disadvantage Framework,* 125 Dickinson L. Rev. 653 (2021), *available at* https://ideas.dickinsonlaw.psu.edu/dlr/vol125/iss3/3/, for discussions of the way racism shapes legal system outcomes at every single stage of processing, including for youth.

[19] Emerging Adult Justice Project of the Justice Lab at Columbia University, *Emerging Adults Incarcerated at Rikers Island: An Overview* (2022), *available at* https://static1.squarespace.com/static/5c6458c07788975dfd586d90/t/634f5fcd7ca2e47ffa658c4a/1666146296944/Emerging+Adults+at+Rikers+Overview.pdf.

[20] *Id.* at 5.

[21] *Id.* at 6.

school educational supports up to age 21 and services for runaway and homeless youth by up to age 24.[22] As recognized by both national researchers and court system administrators, young adults "should be provided with differential treatment within the justice system that considers their developmental needs and unique social challenges."[23] With this legislative reform to our State's criminal procedure and penal laws, New York's laws will more closely reflect the needs of young people and ensure that those same young people are not derailed from paths of economic mobility, education, employment, housing and full participation in our communities.

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[22] Davis, J. and K. Rubin, *Expanding Youth Justice in New York* (2020), at 6, *available at* https://static1.squarespace.com/static/5672e21ddf40f3fd5f527d40/t/5f7f29d11b5a1621b0ee765c/1602169299292/Expanding+Youth+Justice+in+New+York.pdf.

[23] Deal, T., Ana Cienfuegos-Silvera and Lindsey E. Wylie, *Meeting the Needs of Emerging Adults in the Justice System*, Trends in State Courts (2022), at 60, *available at* https://static1.squarespace.com/static/5c6458c07788975dfd586d90/t/62d59fbc0d63fb4f0dd643dc/1658167229178/National+Center+for+State+Courts+-+Needs+of+EAs.pdf.