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### The Concrete Jungle: Where Dreams Are Made of . . . and Now Where Children Are Protected

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## **The Concrete Jungle: Where Dreams Are Made of...and Now Where Children Are Protected**

**Samantha A. Mumola\***

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*“There can be no keener revelation of a society’s soul  
than the way in which it treats its children.”*

*–Nelson Mandela<sup>1</sup>*

### I. Introduction: The Kalief Browder Story

Kalief Browder was sixteen years old when he was arrested and charged as an adult in the Bronx Criminal Court for allegedly stealing a backpack containing \$700, a camera, and an iPod.<sup>2</sup> Because Kalief was on probation at the time of his arrest, he was denied bail and forced to await his trial on Riker’s Island.<sup>3</sup> A severely backlogged court docket and continuous delays from the Bronx District Attorney’s Office lengthened Kalief’s residency on the Island to over three years without even having been convicted.<sup>4</sup> During such time, the teenager endured starvation, violence, corruption, and torture by correction officers and inmates alike.<sup>5</sup> Because he refused to give into a heavy extortion program within the prison, Kalief consistently found himself being jumped by gangs of inmates.<sup>6</sup> Correction officers eventually learned that they could not protect him from these ruthless inmates, so they placed Kalief in solitary confinement to ensure his safety.<sup>7</sup> Throughout the 1,126 days he spent on the Island, Kalief suffered 700 of them in solitary confinement.<sup>8</sup> Kalief was placed in solitary confinement for his own safety, but the real harm was that he spent one year and 335 days in a twelve-by-eight foot box, by himself, for twenty-three hours per day, just for being a *suspect* in a minor robbery case. After his case was dismissed, he was dumped back into

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1. *Nelson Mandela Quotes About Children*, NELSON MANDELA CHILDREN’S FUND (Dec. 8, 2015), <http://www.nelsonmandelachildrensfund.com/news/nelson-mandela-quotes-about-children>.

2. *Time: The Kalief Browder Story: Part 1 – The System* (Spike television broadcast Mar. 1, 2017).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Time: The Kalief Browder Story: Part 2 – The Island* (Spike television broadcast Mar. 8, 2017).

7. *Time: The Kalief Browder Story: Part 3 – The Bing* (Spike television broadcast Mar. 15, 2017).

8. *Time: The Kalief Browder Story: Part 1 – The System*, *supra* note 2.

society, broken and permanently scarred from the hell that he experienced.<sup>9</sup> As his story gained publicity, Kalief attempted to maintain a normal life by attending Bronx Community College and seeking mental help.<sup>10</sup> However, he could not escape his intense feelings of paranoia, self-doubt, delusions, and vulnerability, all of which were developed while in solitary confinement.<sup>11</sup> Consequently, Kalief took his own life in June of 2015,<sup>12</sup> leaving behind a broken family and an exposed criminal justice system.

The tragic and unsettling story of Kalief Browder has notably emerged as a prominent illustration of our criminal justice system's historical failure to protect our youth. Kalief's story gained massive media attention with the help of a TIME documentary series featured on Netflix and famous A-listers such as music artist Jay-Z and TV host Rosie O'Donnell.<sup>13</sup> It is hard to ignore the fact that Kalief Browder was cheated by the system; he chose suicide to escape his demons, which developed after undeserved time spent at Riker's – a place he would have never experienced had he initially been tried as a juvenile in Family Court.

Kalief Browder's devastating story, along with many other similar stories, provoked valid concerns about criminal procedural policies in New York. Fortunately, Kalief did not die in vain; on April 10, 2017, Governor Andrew M. Cuomo signed the New York State Raise the Age reform bill into law.<sup>14</sup> In October 2018, this law commenced New York's progressive journey of raising its juvenile age from sixteen years old to eighteen years old.<sup>15</sup> Although this change is a tremendous step for the State's criminal justice system, its execution has and will

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9. *Time: The Kalief Browder Story: Part 5 – Injustice for All* (Spike television broadcast Mar. 29, 2017).

10. *Time: The Kalief Browder Story: Part 6 – The After Life* (Spike television broadcast Apr. 5, 2017).

11. *Id.*

12. *Id.*

13. *See generally Time: The Kalief Browder Story* (Spike television broadcast).

14. *Governor Cuomo Signs Legislation Raising the Age of Criminal Responsibility to 18-Years-Old in New York*, NY.GOV: GOVERNOR ANDREW M. CUOMO (Apr. 10, 2017), <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-raising-age-criminal-responsibility-18-years-old-new-york>.

15. *Id.*

require considerable adjustment and adaptation by departments and courts throughout the state.<sup>16</sup> This Article discusses the history of the Raise the Age Campaign, the reasons for its promulgation, the potentially significant impact of the new law on our current system, local strategies for implementation, and additional steps beyond raising the age that must be taken to further resolve our system's juvenile delinquency issues.

## II. New York's Archaic Position on Crime and the Need for Change

Often referred to as *The City that Never Sleeps*, *The Center of the Universe*, and *The Melting Pot*,<sup>17</sup> New York generally prides itself on being progressive, advanced, and ahead of its time. However, until the promulgation of Raise the Age in mid-2017, New York was one of only two states in the United States that still treated sixteen-year-olds as adults in the eyes of the law.<sup>18</sup> The campaign to increase the juvenile age from sixteen to eighteen evolved after it was recognized that the State's perception on crime was severely outdated.

Since 1978, sixteen-year-olds have been tried as adults in New York, leaving many teenagers to fend for themselves in adult prisons.<sup>19</sup> The decision to treat sixteen-year-old offenders as adults arose from an "epidemic" in the number of crimes

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16. Tim Fenster, *Raise the Age Raises Questions for Local Officials*, NIAGARA GAZETTE (May 15, 2017), [http://www.niagara-gazette.com/news/local\\_news/raise-the-age-raises-questions-for-local-officials/article\\_d0ba0b50-516e-5e50-96df-f36bfde7ed03.html](http://www.niagara-gazette.com/news/local_news/raise-the-age-raises-questions-for-local-officials/article_d0ba0b50-516e-5e50-96df-f36bfde7ed03.html).

17. Keri Blakinger, *From Gotham to Metropolis: A Look at NYC's Best Nicknames*, DAILY NEWS (Mar. 8, 2016, 10:11 AM), <http://www.nydailynews.com/news/national/gotham-metropolis-nyc-best-nicknames-article-1.2556511>.

18. David Howard King, *Will New York Be Last to 'Raise the Age'?*, GOTHAM GAZETTE (Oct. 1, 2015), <http://www.gothamgazette.com/government/5916-will-new-york-be-last-to-raise-the-age>. The other state was North Carolina, where the House and Senate passed a similar bill in mid-2017. See *Bill Will Punish Teens According to Age and Crime; Not as Adults*, DAILY COURIER, June 23, 2017, at A4.

19. See Patrick Harty, Book Note, *The Moral and Economic Advantages of Raising the Age of Criminal Responsibility in New York Among Juvenile Offenders, and Plans for Rehabilitation*, 33 TOURO L. REV. 1099, 1099 (2017).

committed by children between the ages of sixteen to eighteen.”<sup>20</sup> During this time, the goals of punishment shifted from rehabilitation to retribution, especially after the landmark Supreme Court decision *In re Gault*.<sup>21</sup> In this opinion, Justice Fortas extended procedural due process rights to juveniles while at the same time questioned the effectiveness of the existing rehabilitation system.<sup>22</sup> So began the decline of rehabilitation as a form of criminal punishment, as it eventually became common belief among politicians and legislators that if every offender was punished strongly enough, then this so-called epidemic of juvenile delinquency would disintegrate.<sup>23</sup> During this *get-tough* era, the importance of redirecting child offenders diminished<sup>24</sup> as courts began sentencing juveniles to harsher treatment and longer sentences in an attempt to deter them from recidivism and to make safer the streets of New York.<sup>25</sup> Teenagers were expected to serve their time alongside fully developed men, often standing twice as tall, twice as big, and twice as powerful as them. Comparable to Kalief’s situation, when defenseless adolescents could not fend for themselves in general population, they were *protected* by being thrown into solitary confinement where they spent twenty-three out of twenty-four hours per day trapped alone in a box.<sup>26</sup> Consequently, if a juvenile committed a crime in the late twentieth century, their childhood was taken from them, as they were forced to quickly grow up to survive in prison.

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20. *Id.* at 1099 (citing *People v. Robert C.*, 998 N.Y.S.2d 761, 762 (N.Y. Sup. Ct. 2014)).

21. 387 U.S. 1 (1967); *see also* Christine A. Fazio & Jennifer L. Comito, Note, *Rethinking the Tough Sentencing of Teenage Neonicide Offenders in the United States*, 67 *FORDHAM L. REV.* 3109, 3120–21 (1999).

22. *See generally In re Gault*, 387 U.S. 1.

23. *See* Karen Savage, *Activists Hopeful ‘Torture’ of NY Teens Ends with Passage of Raise the Age Legislation This Year*, *JUVENILE JUSTICE INFO. EXCH.* (Mar. 30, 2017), <http://jjie.org/2017/03/30/activists-hopeful-torture-of-ny-teens-ends-with-passage-of-raise-the-age-legislation-this-year/>.

24. Linda F. Giardino, Note, *Statutory Rhetoric: The Reality Behind Juvenile Justice Policies in America*, 5 *J.L. & POL’Y* 223, 233 n.23 (1996).

25. *See* Harty, *supra* note 19.

26. *Time: The Kalief Browder Story: Part 3 – The Bing*, *supra* note 7.

A. Advancements in Science Offer Deeper Insight into Juvenile Culpability

The invention of the first Magnetic Resonance Imaging (“MRI”) in 1977<sup>27</sup> paved the way for a more profound understanding of brain activity, casting doubt on previous theories of juvenile behavior and policies of criminal reform. For the first time in history, scientists were able to study longitudinal records of brain activity to gain an accurate description of its development in humans from childhood to adolescence.<sup>28</sup> It was discovered that the brain’s frontal lobe—the part that is responsible for cognitive functions such as higher thinking, reasoning, planning, strategizing, and decision-making—did not fully develop until a person’s mid-twenties.<sup>29</sup> From these observations, scientific conclusions were drawn that juveniles’ immature frontal lobe caused them to be more impulsive, more impetuous, more aggressive, and more willing to take on risks in comparison to matured adults.<sup>30</sup> It was deemed that juveniles had “an underdeveloped sense of

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27. JEFF KINLEY & RAYMOND DAMADIAN, GIFTED MIND: THE DR. RAYMOND DAMADIAN STORY, INVENTOR OF THE MRI 99–100 (Master Books 2015).

28. Tracy Rightmer, *Arrested Development: Juveniles’ Immature Brains Make Them Less Culpable Than Adults*, 9 QUINNIPIAC HEALTH L.J. 1, 10–11 (2005).

29. See Harty, *supra* note 19; *Cognitive Brain Function*, BRAINANDSPINALCORD.ORG, <http://www.brainandspinalcord.org/cognitive-brain-function/> (last visited Feb. 17, 2019); *Get the Facts*, RAISE AGE NY, <http://raisetheagency.com/get-the-facts> (last visited Feb. 17, 2019).

30. See Harty, *supra* note 19, at 1111 (stating that “research has shown that adolescents . . . are . . . more likely to underestimate the existence and seriousness of risks attendant to their conduct[,] . . . more prone to risk taking[,] . . . less likely to control their impulses and accurately weigh consequences[, and] . . . more susceptible to outside influences” (citing Ellen Torregrossa-O’Connor, *New Jersey’s Juvenile Waiver Reform and the Nexus Between Adolescent Development and Criminal Responsibility*, 296-OCT N.J. LAW. 16, 16 (2015))); Alexandra O. Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 TEMP. L. REV. 769, 784 (2016) (stating “findings suggest that imbalances in recruitment of cortical and subcortical neural circuitry may underlie adolescents’ impulsive and risky behavior”); Alex A. Stamm, Note, *Young Adults Are Different, Too: Why and How We Can Create a Better Justice System for Young People Age 18 to 25*, 95 TEX. L. REV. 72, 73 (2017) (noting that “young adults and adolescent juveniles are more impulsive than older adults, take more risks, and are less likely to consider the long-term consequences of their actions”).

responsibility” resulting in “ill-considered actions and decisions.”<sup>31</sup> Therefore, because juveniles were less able to weigh the consequences of their behavior,<sup>32</sup> a novel theory was established that they were *less culpable* for their actions than adults.<sup>33</sup>

Furthermore, MRIs allowed scientists to discover the high degree of malleability and amenability characterizing juvenile brains.<sup>34</sup> “[P]sychological research . . . show[ed] that much of youth crime and delinquency is the product of normal adolescent development,” of which they will mature and age out if merely left alone.<sup>35</sup> Additionally, juveniles are more receptive than adults to change, making them the prime candidates for rehabilitation and other alternative punishment programs.<sup>36</sup>

This deeper understanding of the human brain proved the existing juvenile justice system tremendously injurious to the Nation’s youth. It was discovered that not only did the harsher sentences and stricter punishments—consistent with adult treatment of juveniles at the time—result in extremely damaging effects to children, but additionally, society was missing out on a prime opportunity to rehabilitate these easily manipulated, young adolescent criminals into productive citizens and positive influences.<sup>37</sup> Instead, the *protection* juveniles were receiving by being placed in solitary confinement had a profound psychological, sometimes even irreversible,

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31. Harty, *supra* note 19, at 1099–1100 (citing *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

32. See *Get the Facts, supra* note 29 (citation omitted); Andrew Cuomo, Editorial, *True Justice for Young Offenders: Gov. Cuomo on Why It’s Time to Raise the Age of Criminal Responsibility*, DAILY NEWS (May 27, 2015, 5:00 AM), <http://www.nydailynews.com/opinion/andrew-cuomo-true-justice-young-offenders-article-1.2236468>.

33. See Harty, *supra* note 19, at 1102 (stating “scientific evidence shows juveniles have undeveloped brains, making them less culpable for their conduct”); Stamm, *supra* note 30, at 72 (noting that “juveniles are less culpable and more susceptible to rehabilitation than adult offenders” (citation omitted)).

34. See Harty, *supra* note 19; Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 385 (2013).

35. See Henning, *supra* note 34, at 385.

36. See Julianne T. Scarpino, Note and Comment, *A Progressive State of Mind: New York’s Opportunity to Reclaim Justice for Its Juveniles*, 23 J.L. & POL’Y 845, 850 (2015).

37. See generally Harty, *supra* note 19.



effect on these sensitive teenagers, which tended to manifest itself in increased paranoia, depression, anxiety, hallucinations, and panic attacks.<sup>38</sup> Further, due to the heightened impressionability of juvenile minds, their exposure to violent and hostile environments containing other more dangerous adult offenders was in effect creating a breeding ground from which the young teens were able to learn how to become career criminals. Thus, in reality, the criminal justice system was producing the opposite effect from its intent through its mistreatment of juveniles.

#### B. Society's Outcry to Protect the Youth

With the help of a more in-depth understanding of juvenile culpability, it became clear that criminal justice reform was morally, socially, and economically advantageous. Consequently, as twentieth century scientists developed further understanding of the aforementioned differences between juvenile and adult brains, society became more vehement on restructuring the criminal justice system in an effort to take advantage of the youth's impressionability.

On a moral note, it is a common view that society has an obligation to recognize children's abilities and assist them in capitalizing on their strengths.<sup>39</sup> This obligation includes giving youth the best chance to become productive and contributing members of society, rather than just giving up by placing them in the same category as adult criminals and forcing them into inevitably damaging situations.<sup>40</sup> Furthermore, reform was seen as socially advantageous because studies showed that the

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38. *Id.* at 1109–10 (citing Laura Dimon, *How Solitary Confinement Hurts the Teenage Brain*, ATLANTIC (June 30, 2014), <http://www.theatlantic.com/health/archive/2014/06/how-solitary-confinement-hurts-the-teenage-brain/373002/>).

39. See Michael A. Corriero & John R. Dunne, Editorial, *Five Reasons to Raise the Age of Criminal Responsibility*, NEWSDAY (Mar. 13, 2015, 2:06 PM), <https://www.newsday.com/opinion/oped/five-reasons-to-raise-age-of-criminal-responsibility-1.10057004>.

40. Jeffrey D. Klein, *The Price of Juvenile Justice: Why Raising the Age Makes Cents for New York*, N.Y. STATE SENATE (Dec. 29, 2016), <https://www.nysenate.gov/newsroom/press-releases/jeffrey-d-klein/price-juvenile-justice-why-raising-age-makes-cents-new-york>.

recidivism rate could be reduced if the criminal justice system were to provide meaningful early intervention services to children.<sup>41</sup> Not only would this lead to safer streets, but rehabilitation and restoration would allow juveniles to avoid the life stigmatization of being a career criminal—a reputation which creates barriers to employment, housing, and education and ultimately inhibits people from becoming contributing members of society.<sup>42</sup> Finally, reducing the crime rate would be beneficial to our economy because there would be less money spent on housing criminals, which arguably leads to more money injected into the market. Thus, the writing was on the wall.

In 2005, the United States Supreme Court initiated change when it held in *Roper v. Simmons* that the death penalty was inappropriate for youth under the age of eighteen.<sup>43</sup> In his opinion, Justice Kennedy analyzed the issue by drawing parallels between juveniles and mentally retarded individuals.<sup>44</sup> It had been held by the same Court three years prior in *Atkins v. Virginia* that both the Eighth and Fourteenth Amendments prohibited the execution of mentally retarded people due to their inherent lack of culpability.<sup>45</sup> Drawing on this analogy, Justice Kennedy found that sentencing a juvenile to death was also a disproportionate punishment on the ground that there existed a difference in brain functioning between adults and children which similarly rendered the latter “categorically less culpable than the average criminal.”<sup>46</sup> Ultimately, the Court’s historic holding commenced a major shift from the practice of treating juveniles as adults within the criminal justice system to promoting a system which instead focused on their rehabilitation.

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41. Cuomo, *supra* note 32.

42. *Id.*; see also Savage, *supra* note 23.

43. 543 U.S. 551, 568 (2005).

44. *Id.* at 563–68.

45. See 536 U.S. 304, 319–21 (2002).

46. *Roper*, 543 U.S. at 567 (quoting *Atkins*, 536 U.S. at 316).

### C. Birth of the Raise the Age Campaign

After the holding in *Roper*, awareness of the need for juvenile justice reform exponentially grew. On January 17, 2012, New York took an initial step toward policy reform through the creation of a pilot Adolescent Diversion Program (“ADP”), which established specialized juvenile court parts in nine various counties.<sup>47</sup> Subsequent findings included a decreased re-arrest rate for felonies coupled with an absence of harm to public safety.<sup>48</sup> More interestingly, the results showed that intensive treatment to high-risk individuals was effective, but intensive treatment to low-risk individuals actually *increased* their chances of recidivism.<sup>49</sup> These results were attributed to the increased exposure of the low-risk offender to his or her high-risk peers, the latter ultimately having contaminating influences on the former’s impressionable mind.<sup>50</sup>

In July 2013, after the ADP study’s “resounding success”<sup>51</sup> presented a promising result, the Raise the Age NY campaign was launched.<sup>52</sup> Over the next few years, New Yorkers were exposed to various speeches, town hall meetings, symposiums, and briefings regarding the pressing need for a new, developmentally-appropriate approach to the juvenile justice system. In his 2014 State of the State address, Governor Cuomo publicly made Raise the Age a top priority by sharing his plan to

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47. MICHAEL REMPEL ET. AL., *THE ADOLESCENT DIVERSION PROGRAM: A FIRST YEAR EVALUATION OF ALTERNATIVES TO CONVENTIONAL CASE PROCESSING FOR DEFENDANTS AGES 16 AND 17 IN NEW YORK* 3 (2013), [https://www.courtinnovation.org/sites/default/files/documents/ADP\\_Report\\_Final\\_0.pdf](https://www.courtinnovation.org/sites/default/files/documents/ADP_Report_Final_0.pdf).

48. *Id.* at 46–48.

49. *Adolescent Diversion Program in NY: Researchers Discuss First-Year Impacts*, CTR. COURT INNOVATION, (May 13, 2013), <https://www.courtinnovation.org/publications/adolescent-diversion-program-ny-researchers-discuss-first-year-impacts>.

50. *Id.*

51. Jonathan Lippman, *Criminal Justice Reform Is Not for the Short-Winded: How the Judiciary’s Proactive Pursuit of Justice Helped Achieve “Raise the Age” Reform in New York*, 45 FORDHAM URB. L.J. 241, 264 (2017).

52. See generally Jordana Lorenzo, *A Timeline of the Raise the Age Campaign*, WESTCHESTER CHILDREN’S ASS’N (Oct. 1, 2015), <https://wca4kids.org/blog/blog-highlights/a-timeline-of-the-raise-the-age-campaign/>.

raise the juvenile age in New York.<sup>53</sup> A few months after his speech, Cuomo signed Executive Order 131 to establish a Commission on Youth, Public Safety, and Justice composed of legal, social, and political leaders throughout New York.<sup>54</sup> On January 19, 2015, the Commission released their 163-page report outlining its recommendations for juvenile justice reform, including expanding Family Court jurisdiction by raising the age to eighteen and creating youth parts within the criminal court system.<sup>55</sup> Additionally, the movement gained momentum after the tragic passing of Kalief Browder, which resulted in a widespread public outcry for reform. Finally, after over two years of campaigning, Governor Cuomo signed the New York State Raise the Age reform bill into law on April 10, 2017.<sup>56</sup> The new law was phased in on October 1, 2018 for sixteen-year-olds, and the final stage is set to take effect on October 1, 2019 for seventeen-year-olds.<sup>57</sup>

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53. See Andrew M. Cuomo, Governor of N.Y., State of the State Address (Jan. 8, 2014) (transcript available at <https://www.governor.ny.gov/news/transcript-governor-cuomos-2014-state-state-address>); see also David Howard King, *Cuomo's Executive Action on 'Raise the Age' Prompts Questions*, GOTHAM GAZETTE (Jul. 8, 2015), <http://www.gothamgazette.com/government/5797-cuomos-executive-action-on-raise-the-age-prompts-questions>.

54. See Press Release, New York State, Governor Cuomo Announces Members of Commission on Youth, Public Safety & Justice (Apr. 9, 2014), <https://www.governor.ny.gov/news/governor-cuomo-announces-members-commission-youth-public-safety-justice>; see generally JEREMY M. CREELAN & SOFFIYAH ELIJAH, FINAL REPORT OF THE GOVERNOR'S COMMISSION ON YOUTH, PUBLIC SAFETY AND JUSTICE: RECOMMENDATIONS FOR JUVENILE JUSTICE REFORM IN NEW YORK STATE (2015), [http://www.njcn.org/uploads/digital-library/ReportofCommissiononYouthPublicSafetyandJustice\\_0%20\(1\).pdf](http://www.njcn.org/uploads/digital-library/ReportofCommissiononYouthPublicSafetyandJustice_0%20(1).pdf); Gary Gately, *Gov. Cuomo Commish: New York State Should Raise the Age to 18*, JUVENILE JUSTICE INFO. EXCH. (Jan. 19, 2015), <https://jjie.org/2015/01/19/gov-cuomo-commish-new-york-state-should-raise-the-age-to-18/108242/>.

55. See Scarpino, *supra* note 36, at 879–80.

56. See *Governor Cuomo Signs Legislation*, *supra* note 14.

57. See KEY COMPONENTS OF THE LEGISLATION, RAISE AGE NY, [http://raisetheagency.com/wp-content/uploads/2017/06/rta.billsummary.final\\_June-2017.pdf](http://raisetheagency.com/wp-content/uploads/2017/06/rta.billsummary.final_June-2017.pdf) (last visited Feb. 17, 2019) [hereinafter *Raise the Age Bill Summary*]. It is not entirely clear why the Governor decided to phase-in implementation, but presumably it is because of budgetary and housing restrictions. See Jimmy Lawton, *St. Lawrence County Sheriff Has Some Concerns Over 'Raise the Age' Law*, N. COUNTRY NOW (May 13, 2017, 4:16 PM),

### III. The Raise the Age Law: A Shift in the Juvenile Age

This past October, New York saw many changes in their State criminal justice system. At the bare minimum, the Raise the Age law will have the effect of raising the presumptive age of juvenile accountability to eighteen years; however, it also provides for much more than that.<sup>58</sup> In addition to this political feat, the law also requires that parents be notified when their children are arrested and involved in the questioning of their children.<sup>59</sup> Also, questioning of juveniles will now have to take place in age-appropriate settings and for “developmentally appropriate lengths of time.”<sup>60</sup> Furthermore, the new law permits offenders who have been crime-free for ten years to apply to seal their record(s).<sup>61</sup>

Raising the juvenile age requires much more than just stating the existence of a new threshold age. As a result of this law, original jurisdiction for a vast majority of cases has been transferred from adult criminal court to Family Court.<sup>62</sup> The underlying theory behind this redirection is that it will benefit sixteen- and seventeen-year-old offenders because Family Court judges have experience in handling juveniles and are specialized in crafting sentences with a main goal of encouraging rehabilitation.<sup>63</sup> Moreover, not only has the new law redirected

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<http://northcountrynow.com/news/st-lawrence-county-sheriff-has-some-concerns-over-raise-age-law-0198556> (stating that “[the St. Lawrence County Sheriff] is glad to see that the law will be phased in, because he does not believe the state is ready to house those that need to have secure placement”); Joanna Walters, *New York Raises Age of Criminal Responsibility in ‘Lightning Rod’ Reform*, *GUARDIAN* (Apr. 10, 2017, 7:44 AM), <https://www.theguardian.com/us-news/2017/apr/10/new-york-raises-age-of-criminal-responsibility-teens-adult-prison> (noting “Governor Andrew Cuomo said the reform ‘was . . . probably the most difficult part of the budget’”).

58. *See Raise the Age Bill Summary*, *supra* note 57.

59. *Id.*

60. *Id.*

61. *Id.*

62. RAISING THE AGE OF CRIMINAL RESPONSIBILITY: THE IMPACT ON COUNTIES, N.Y. STATE ASS’N CTYS., <http://www.nysac.org/files/Raising%20the%20Age%20Impact%20on%20Counties%20Interim%20Report.pdf> (last visited Feb. 17, 2019) (explaining that, as a technical matter under the new law, any sixteen- or seventeen-year-old whose cases remain in the Youth Part of an adult criminal court will now be referred to as an Adolescent Offender).

63. Klein, *supra* note 40.

the trials of many youthful offenders from Superior Court to Family Court, but it has also provided for the creation of a Youth Part in adult criminal court for the exclusive use of Juvenile and Adolescent Offenders, in which the presiding judges are the same experienced Family Court judges as well.<sup>64</sup>

The new law provides that all misdemeanor cases involving sixteen- and seventeen-year-olds, other than those concerning non-criminal violations, will be heard in Family Court, and will be held pursuant to the Family Court Act.<sup>65</sup> Additionally, while all felonies will start in the Youth Part of adult court, all non-violent felonies will be presumptively transferred to Family Court absent a motion by the District Attorney to prevent removal, which must be made within thirty days of arraignment.<sup>66</sup> A motion by the District Attorney to keep the trial in the Youth Part will only be granted upon a finding of *extraordinary circumstances*.<sup>67</sup> This is a situation in which the judge will have the ability to exercise the most discretion under the new law, as the precise definition of *extraordinary circumstances* is not statutorily defined and, therefore, will have to be developed over time through case law. Thus, on one hand, the new law expands an adult court judge's authority to impose a therapeutic position toward young teens;<sup>68</sup> however, on the other hand, the discretion presented in this situation could allow a judge to rule consistent with past approaches by holding in favor of the District Attorney to keep the juvenile case in adult court. If this were to happen, the judge's decision could have the effect of executing the same historic, retributive goals which the new law was created to combat. It will be interesting to see the definition of *extraordinary circumstances* evolve in the coming years, as this is conceivably one of the largest gray areas present within the new law.

Alternatively, if the case involves violent felonies, a court will essentially operate in the same way as if the crime were a

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64. See *Raise the Age Bill Summary*, *supra* note 57.

65. *Id.*

66. *Id.*; see also Barry Kamins, *New Criminal Justice Legislation: Part One*, N.Y. LAW JOURNAL (Oct. 6, 2017, 2:04 PM), <https://www.law.com/newyorklawjournal/almID/1202799864687/>.

67. *Raise the Age Bill Summary*, *supra* note 57.

68. Corriero & Dunne, *supra* note 39.

non-violent felony, unless the alleged crime involves the suspect: (1) displaying a deadly weapon in furtherance of the offense, (2) causing significant physical injury, or (3) engaging in unlawful sexual conduct.<sup>69</sup> If any one of these three conditions are proven by a preponderance of the evidence, removal to Family Court will only be allowed *upon consent* of the District Attorney.<sup>70</sup> If the District Attorney does not permit the redirection of the accused to Family Court, then the teenager will remain in the Youth Part as an alleged Adolescent Offender.<sup>71</sup> However, in the Youth Part, the judge is still required take the youth's age into consideration when sentencing.<sup>72</sup> The only felonies that will never be moved to Family Court are non-drug related Class A felonies<sup>73</sup> and criminal offenses under the Vehicle and Traffic Law.<sup>74</sup>

Nevertheless, even if the juvenile is being tried in the Youth Part as an Adolescent Offender, no sixteen- or seventeen-year-old will ever be placed in an adult prison under the new law. This aspect of Raise the Age is attributable in part to the Kalief Browder story and many others like it.<sup>75</sup> If the juvenile's case is heard in Family Court, the offender will be detained in facilities operated and licensed by the New York State Office of Children and Family Services ("OCFS") or the Administration for Children's Services ("ACS").<sup>76</sup> If the case is heard in the Youth Part of Superior Court, the Adolescent Offenders will be detained in a "specialized secure juvenile detention center for older youth, which will be certified and regulated by the OCFS in conjunction with the state commission of correction."<sup>77</sup> If an Adolescent Offender is sentenced to less than one year of jail time, the judge will have the discretion to either allow them to serve in a specialized juvenile detention center or be placed in

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69. *Raise the Age Bill Summary*, *supra* note 57.

70. *Id.*; Interview with Paul Noto, First Deputy District Attorney, Westchester County District Attorney's Office (Mar. 1, 2018).

71. *Raise the Age Bill Summary*, *supra* note 57.

72. *Id.*

73. *Id.*

74. *Id.*

75. *See, e.g.*, RIKERS: AN AMERICAN JAIL (Public Square Media for the Schumann Media Center 2016).

76. *Raise the Age Bill Summary*, *supra* note 57.

77. *Id.*

an enhanced security facility for Adolescent Offenders managed by the Department of Corrections and OCFS.<sup>78</sup> If the Adolescent Offender is sentenced to more than one year, he or she will serve his or her time in the latter, enhanced security facility.<sup>79</sup> All of these various pathways, whether traveled through family or adult criminal court, will nevertheless ensure that time served by a juvenile is spent in an age-appropriate juvenile detention center. This fact is arguably the greatest achievement of the new legislation, but it also involves the most preparation to implement.<sup>80</sup>

#### IV. Walking the Walk: The Implementation of Raise the Age<sup>81</sup>

At this juncture, New York Counties are working hard to execute the new law. In May of 2017, the New York State Association of Counties announced the deployment of an advisory group task force to assist in facilitating Raise the Age implementation by “observ[ing] and report[ing] back to the State’s own Raise the Age task force [regarding any] problem[s] or questions faced by those [within the counties] who’d be responsible for the transition.”<sup>82</sup>

During the upcoming years, the implementation of the new law will undoubtedly have significant economic and political impacts on many departments throughout the State. It “will affect nearly every agency involved in detaining, assessing, prosecuting and holding court for criminal suspects.”<sup>83</sup> The good news is, by being one of the last states in the United States to raise the juvenile age, New York has a lot of examples to follow. Despite this fact, the fiscal impact of Raise the Age is a particular area of concern for county leaders.<sup>84</sup> Costs are

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78. *Id.*

79. *Id.*

80. *See infra* pt. IV.

81. Because New York is only in the beginning stages of implementation, this Section was mainly derived from discussion panels on this topic and conversations with various Westchester County department leaders who were kind enough to assist me in understanding exactly what is being done to effectuate this new law. Their names are mentioned, *supra*.

82. *Id.*

83. Fenster, *supra* note 16.

84. *The County Perspective: The Age of Criminal Responsibility and Its*



expected to rise due to construction of new detention facilities, renovations of old detention facilities, the addition of personnel, increased services and transportation, and execution of the law in court.<sup>85</sup> It has been argued that, if not funded properly, Raise the Age will not be successful in achieving its long-term purposes.<sup>86</sup> Presently, the State is committed to full reimbursement of all participating counties on the condition that they do not exceed the allowed tax levy limit.<sup>87</sup> However, if a county were to go over the established tax cap, it would not be fully refunded for the cost incurred to implement the new law, unless it were to make a sufficient showing of financial hardship.<sup>88</sup> An additional concern is that funding for the new law will take away from funding of other similar programs, such as the Alternatives to Incarceration (“ATI”) Program or the Close to Home initiative in New York City.<sup>89</sup> Also, “reimbursement rates [will be determined] based on costs to counties that are ‘deemed necessary’” by the State.<sup>90</sup> Unfortunately, only time will tell whether funding from the

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*Impact in New York State*, 115th Cong. 2 (N.Y. 2017) (statement of Stephen J. Acquario, Executive Director, New York State Association of Counties) (noting that “[c]ounties have supported the public policy goals of raising the age of criminal responsibility from 16 to 18 for nonviolent offenses, but we have also consistently raised concerns about . . . [t]he costs of such a comprehensive proposal”); see generally Jon Campbell, *‘Raise the Age’ Central to NY Budget Talks*, LOHUD (Mar. 27, 2017, 8:26 AM), <https://www.lohud.com/story/news/politics/politics-on-the-hudson/2017/03/24/raise-age-central-ny-budget-talks/99583554/>; Joe Mahoney, *New York Counties Decry ‘Raise the Age,’* NIAGARA GAZETTE (Oct. 28, 2017), [http://www.niagara-gazette.com/news/local\\_news/new-york-counties-decry-raise-the-age/article\\_ac28106c-bbb4-11e7-892e-c376d8d75b5b.html](http://www.niagara-gazette.com/news/local_news/new-york-counties-decry-raise-the-age/article_ac28106c-bbb4-11e7-892e-c376d8d75b5b.html).

85. Keep in mind that this is just a preliminary assessment before the law even goes into effect. “Unexpected” costs are almost expected to arise upon implementation later this year.

86. *Advocates Meet with Legislators in Albany on Raise the Age Funding*, RAISE AGE NY, <http://raisetheagency.com/newitem/advocates-meet-legislators-albany-raise-age-funding> (last visited Feb. 17, 2019).

87. Jon Campbell, *NY Ties Tax Cap to ‘Raise the Age’; Counties Will Forego Funds If Limit Is Exceeded*, POUGHKEEPSIE J., Apr. 20, 2017, at A2; Lawton, *supra* note 57.

88. Campbell, *supra* note 87; see generally Lawton, *supra* note 57.

89. *Advocates Meet with Legislators*, *supra* note 86.

90. Ethan Powers, *As ‘Raise the Age’ Passes, Counties Take Issue with Shouldering Costs*, CLARENCE BEE, (Apr. 26, 2017), [https://www.clarencebee.com/news/2017-04-26/Front\\_Page/As\\_Raise\\_the\\_Age\\_passes\\_counties\\_take\\_issue\\_with\\_s.html](https://www.clarencebee.com/news/2017-04-26/Front_Page/As_Raise_the_Age_passes_counties_take_issue_with_s.html).

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State will adequately cover the counties' costs.

#### A. Juvenile Facilities

As mentioned above, one of the most impactful facets of the new legislation is the guaranteed separation of adults and juveniles. Facilities that merely segregate adults from juveniles will no longer suffice under the new law, even if there is a sight and sound separation between the two populations.<sup>91</sup> Instead, it is required that both detained and convicted juveniles be housed in completely separate facilities.<sup>92</sup> Juvenile facilities differ from adult facilities in that they are designed to be remedial<sup>93</sup> with minimal signs of detention (i.e. cells and holding areas).<sup>94</sup> Although this is a positive step for the mental health of the youth, it has required a tremendous amount of costs throughout the state, especially in those rural New York counties that previously did not have *any* secure juvenile facilities.<sup>95</sup>

In May 2017, when the law was initially promulgated, it was reported that the OCFS website listed only twelve certified facilities across New York State, only four of which were considered secure.<sup>96</sup> Thus, leaders throughout the State were forced to construct new detention facilities or reconstruct old ones to meet the appropriate requirements for juveniles. In September 2017, Governor Cuomo issued a press release announcing that construction bidding had started at \$89 million for the State: \$41 million to expand capacity at two existing OCFS-owned juvenile justice facilities, and another estimated \$48 million in updating other existing correctional facilities.<sup>97</sup>

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91. W.T. Eckert, *Jail Eyed for Juvenile Center; 'Raise the Age': Change in How Young Offenders Are Charged Brings Need in NNY*, DAILY COURIER-OBSERVER, Dec. 19, 2017, at A1; Fenster, *supra* note 16; *Frequently Asked Questions: Funding*, N.Y. STATE: PROGRAMS: RAISE AGE, <https://www.ny.gov/raise-age/frequently-asked-questions> (last visited Feb. 17, 2019).

92. Eckert, *supra* note 91; Fenster, *supra* note 16.

93. Eckert, *supra* note 91.

94. Interview with Frank Rescigno, Comm'r of Police, Elmsford Police Dep't (Feb. 15, 2018).

95. See Eckert, *supra* note 91.

96. Fenster, *supra* note 16.

97. Press Release, N.Y. State, Governor Cuomo Announces Bidding for \$89 Million in Construction Projects to Re-Purpose Four Facilities to House

Additionally, “the Dormitory Authority [of the State of New York] will help finance projects by reimbursing county and local governments that need to build new facilities or retrofit existing ones.”<sup>98</sup> In 2017, \$19 million was appropriated by New York State to finance the detention capital costs to support the development projects. This represents only 49% of reimbursement; “additional funding would need to be appropriated in future years to provide 100% state reimbursement to qualifying counties.”<sup>99</sup>

Although it is estimated that New York City and Westchester will develop new facilities to account for about 200 juveniles in total,<sup>100</sup> expanding holding capacity at former juvenile detention centers seems to be a common and effective way that counties throughout New York are preparing for the influx of juveniles. For example, Woodfield Cottage, located in Westchester County, was authorized to receive a \$1.8 million bond from the County in order to expand and completely redevelop their facilities.<sup>101</sup> This route is highly logical because existing juvenile facilities already have access to the required services, including education, employment training, vocational training, recreation, counseling, and medical and mental health

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Youth Under Raise the Age (Sept. 19, 2017), <https://www.governor.ny.gov/news/governor-cuomo-announces-bidding-89-million-construction-projects-re-purpose-four-facilities>.

98. Brian Molongoski, *As ‘Raise the Age’ Deadline Nears, Counties Mulling Options for Juvenile Facility*, WATERTOWN DAILY NEWS (Mar. 2, 2018, 5:15 AM), <http://www.watertowndailytimes.com/news03/as-raise-the-age-deadline-nears-counties-mulling-options-for-juvenile-facility-20180302>. The New York Dormitory Authority provides construction and financing services to facilitate project development throughout the State. *What We Do*, N.Y. STATE: DASNY, <https://www.dasny.org/about-us> (last visited Feb. 17, 2019).

99. *Frequently Asked Questions*, *supra* note 91.

100. Interview with Jeremy Kohomban, CEO, Children’s Village (Feb. 20, 2018).

101. Minutes of Westchester County Board of Legislators Committee on Infrastructure 3 (June 13, 2017), <https://westchestercountyny.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=3966&Inline=True>; Interview with Jeremy Kohomban, *supra* note 100.

services.<sup>102</sup> Therefore, expansion is a more efficient option than building and developing juvenile facilities from scratch.

## B. Additional Personnel

Certain departments throughout New York's counties are being forced to hire additional personnel to ensure successful implementation of Raise the Age. For example, in Westchester County, a new position has been created in the District Attorney's Office in order to better manage added responsibilities under the new law,<sup>103</sup> including monitoring cases for compatibility with the three-condition test<sup>104</sup> and arguing motions to stay in the Youth Part.<sup>105</sup>

The Department of Probation is expected to be impacted the most by Raise the Age for many reasons and, therefore, has plans to hire additional personnel by the time the law is in full effect.<sup>106</sup> The impact will be felt the most in this Department because the expansion of the juvenile age will inevitably increase the range of juveniles that the Probation Department is required to assess. Furthermore, evaluating a juvenile is no easy task; State regulations mandate more thorough assessments for juveniles than adults.<sup>107</sup> This process includes lengthier interviews, interviews with the offenders' parents or guardians, intense time spent on review of the case and developing a case plan, and serious consideration of the risk factors for recidivism.<sup>108</sup> In addition to assessments, probation officers are responsible for providing juveniles with appropriate referrals to service providers<sup>109</sup> and maintaining contact with

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102. See Press Release, N.Y. State, *supra* note 97.

103. Interview with Paul Noto, *supra* note 70.

104. See *supra* Part III.

105. Interview with Paul Noto, *supra* note 70.

106. Tim Fenster, *Potential Impact of Raise the Age Law Explained*, LOCKPORT UNION-SUN & JOURNAL (May 8, 2017), [http://www.lockportjournal.com/news/local\\_news/potential-impact-of-raise-the-age-law-explained/article\\_7d021e52-ec63-55f9-8a45-d2a552bf3146.html](http://www.lockportjournal.com/news/local_news/potential-impact-of-raise-the-age-law-explained/article_7d021e52-ec63-55f9-8a45-d2a552bf3146.html); Mary Furcillo, Assistant Comm'r, Westchester Cty. Dep't of Prob., Panel on RIKERS: AN AMERICAN JAIL (Mar. 1, 2018).

107. Fenster, *supra* note 106.

108. *Id.*

109. *Id.*

schools.<sup>110</sup> The Probation Department is also involved with setting up activities for children to do, including movies and other activities.<sup>111</sup>

As a result of these important requirements, an officer generally devotes twice the amount of time to a juvenile case than he or she would to standard adult cases.<sup>112</sup> This time is needed to work closely with the adolescent and ensure that their case receives the proper attention to make the probation process more effective.<sup>113</sup> Additionally, under the old law, youth assessments were never done in adult criminal court unless the youth was convicted.<sup>114</sup> However, under the new law, youth assessments will be completed for both Juvenile and Adolescent Offender cases, meaning that they will be performed regardless of whether the case is heard in Youth Part or Family Court.<sup>115</sup> Finally, probation officers are mandated to follow up with the juvenile every ninety days instead of every six months for adults.<sup>116</sup>

The expansion of the Family Court's jurisdiction under the new law will also have a huge effect on the probation departments throughout New York because juveniles processed through Family Court may still be allowed to divert their case from a prosecutor's office to a probation office in a process called *adjustment*.<sup>117</sup> To determine eligibility for adjustment, specialized probation officers investigate and assess the background of the particular case to determine the juvenile's likelihood of reoffending and chances of rehabilitation if given access to the available tools and services.<sup>118</sup> The ultimate goal of this investigation is to decide if the adjustment program is suitable for the case.<sup>119</sup> If the case is adjusted, "the juvenile [will be allowed to] participate in rehabilitative programs in lieu of

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110. Furcillo, *supra* note 106.

111. *Id.*

112. *See* Fenster, *supra* note 106.

113. *Id.*

114. *Id.*

115. *See id.*

116. *Id.*

117. Scarpino, *supra* note 36, at 861.

118. *Id.*

119. *See id.*

prosecution.”<sup>120</sup> If not, the juvenile’s case will be assigned to a “special juvenile prosecutor who is tasked with prosecuting the case in a manner consistent with youth development principles.”<sup>121</sup> Prosecutors decide on the appropriate level of punishment or remedy after performing a mandatory investigation, which involves conducting interviews, weighing the gravity of the offense, and exploring the academic, familial, social, and emotional background of the juvenile.<sup>122</sup> As one can see, the processes required to make appropriate decisions regarding juvenile adjustment and punishment are very time-consuming.

Because the management of juvenile cases takes more time, and because expanding the juvenile age range will inevitably lead to a higher caseload, probation departments throughout New York State are forced to add more personnel to their staff. For example, Westchester County’s Probation Department has plans to hire nineteen additional officers by the end of 2019.<sup>123</sup> These officers will be needed to perform these lengthy intake and assessment procedures and to discover what services are needed and the best way to rehabilitate the young adult.<sup>124</sup>

### C. Adequate Services

The ultimate goal of referring juveniles to services is to “link young people whenever possible to rehabilitative options that will help them pursue law-abiding, productive future lives.”<sup>125</sup> Teens funneled into adult prisons simply do not have access to the same rehabilitative services that the juvenile justice system provides.<sup>126</sup> Additionally, services provided in juvenile facilities

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120. *Id.*

121. Symposium, *In Search of Meaningful Systemic Justice for Adolescents in New York*, 35 CARDOZO L. REV. 1143, 1147 (2014).

122. *Id.*; see also Scarpino, *supra* note 36, at 861.

123. Furcillo, *supra* note 106.

124. *Id.*

125. Interview with Honorable Janet DiFiore, Chief Judge, N.Y. State (Mar. 16, 2018).

126. Teresa Wiltz, *How ‘Raise the Age’ Laws Might Reduce Recidivism*, HUFFPOST (May 31, 2017, 10:01 AM), [https://www.huffingtonpost.com/entry/how-raise-the-age-laws-might-reduce-recidivism\\_us\\_592ecb3ae4b0d80e3a8a3211](https://www.huffingtonpost.com/entry/how-raise-the-age-laws-might-reduce-recidivism_us_592ecb3ae4b0d80e3a8a3211).

differ from those that are equipped to handle adults because “effective juvenile facilities are founded on cultures that value relationships and works [sic] closely with family members and has all needed treatment interventions available.”<sup>127</sup> Current services available to juveniles include: skills training, advanced counseling, mental health treatment, substance abuse treatment, recreation services, and developmentally appropriate education and vocational training by Boards of Cooperative Educational Services, (“B.O.C.E.S.”) teachers.<sup>128</sup> Additionally, there is highly structured and restrictive programming available for aggressive or assaultive youth.<sup>129</sup> These services are aimed at addressing issues that brought the teen there in the first place and teaching them how to be productive members of society, all while providing punishment for their wrongdoing(s).<sup>130</sup>

An increase in juvenile cases under the new law will undeniably result in an “inevitable expansion of services”<sup>131</sup> because a larger number of individuals will be eligible for services to further their rehabilitation. It is important that the children, whom this law is intended to help, do not suffer from compromised services due to ineffective implementation. Thus, ensuring that service providers are equipped to handle the influx of referrals is going to be a critical difference in the success of raising the age. Maintaining effective services includes not only hiring enough people, but hiring people that are *passionate* about helping children.<sup>132</sup> The quality of services is just as important as the abundance of services, if not more. Furthermore, in order for these services to be effective, sufficient funding is needed to motivate these service providers to do a

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127. Interview with Jeremy Kohomban, *supra* note 100.

128. Fenster, *supra* note 16; *Frequently Asked Questions*, *supra* note 91.

129. See Fenster, *supra* note 16; *Frequently Asked Questions*, *supra* note 91.

130. See Fenster, *supra* note 16; *Frequently Asked Questions*, *supra* note 91.

131. *County Youth Bureaus Meet to Discuss “Raise the Age” Initiative*, CLARENCE BEE (Sep. 27, 2017), [https://www.clarencebee.com/news/2017-09-27/Local\\_News/County\\_youth\\_bureaus\\_meet\\_to\\_discuss\\_Raise\\_the\\_Age.html](https://www.clarencebee.com/news/2017-09-27/Local_News/County_youth_bureaus_meet_to_discuss_Raise_the_Age.html)

132. Furcillo, *supra* note 106.

good job in their work.<sup>133</sup>

Other services provided to juveniles throughout the justice system include foster care and transportation to court appearances.<sup>134</sup> Due to the increased juvenile age, foster care agency policies will need to adapt to the placement of older juvenile delinquents.<sup>135</sup> As for transportation, the sheriff's and county police departments are typically tasked with the transportation of juveniles to and from their detention centers and court appearances.<sup>136</sup> Although the transportation cost is not expected to significantly increase, the State is prepared to fully reimburse "county costs associated with the transport of youth by the applicable county sheriff that would not have otherwise occurred absent *Raise the Age* legislation."<sup>137</sup>

#### D. Court Appearances

New York State Courts "have been planning for implementation of Raise [t]he Age . . . legislation since its passage in April 2017."<sup>138</sup> Overall, there will be two major changes to the court system as a result of the new legislation. Firstly, lowering the age of criminal responsibility will unsurprisingly lead to a growth of the Family Court dockets because this is where juvenile hearings are held. Secondly, a more convoluted change to the court system will arise in the law's creation of the Youth Part in Superior Court. This Section discusses these two major changes in turn.

Although Family Court is expected to see an increased docket, the procedural aspect of the court system and the

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133. Interview with Jeremy Kohomban, *supra* note 100.

134. Interview with Frank Rescigno, *supra* note 94.

135. *Frequently Asked Questions*, *supra* note 91.

136. Jimmy Lawton, 'Raise the Age' Raises Questions, N. COUNTRY THIS WEEK (May 10, 2017), <https://advance.lexis.com/document/?pdmfid=1000516&crd=d89cfa64-3563-4308-905a-ad4f5849753a&pdDocFullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A5NHS-FR01-DXVP-V0S0-00000-00&pdDocid=urn%3AcontentItem%3A5NHS-FR01-DXVP-V0S0-00000-00&pdContentComponentid=399552&pdteaserkey=sr0&pdtab=allpods&ecom p=5pkLk&earg=sr0&prid=9dbc9e42-88da-4dcf-b0d1-694c5586a07f>.

137. *Frequently Asked Questions*, *supra* note 91.

138. Interview with Janet DiFiore, *supra* note 125.



treatment of parties will essentially remain the same.<sup>139</sup> Family Court judges are already trained and experienced in presiding over juvenile cases and gearing their punishments toward rehabilitation. Thus, the only real impact it will feel is an expansion in the age of the individuals before it. As a result, there will not likely be a huge adjustment period, and implementation may just consist of some additional specialized training to adapt to the new age group. Nevertheless, Family Courts throughout the state have already been assessed for their capability to manage the projected increase in dockets, plans have been developed, and “[a] final determination of what additional resources are required . . . will be made in the near future.”<sup>140</sup> It would not be surprising nor injurious to the criminal justice system if Family Court decided to hire more judicial and non-judicial staff to handle the influx of juveniles.<sup>141</sup> However, it seems like this decision is going to be made post-implementation after the courts have adjusted to the initial stages of the new legislation later this year.

The larger impact of the new law is going to be felt by the adult criminal court, where there is a new Youth Part.<sup>142</sup> The Youth Part is completely new territory, so surely there will be a transition period. To make this transition smoother, “[t]here [was] extensive [state-wide] trainings held throughout the summer . . . on the new law.”<sup>143</sup> Additionally, judges and court staff engaged in a specialized training to better prepare them to address cases of adolescent and juvenile offenders.<sup>144</sup> The new law is not only changing the role of the judges in adult criminal court, but it is also changing the role of prosecutors as well. The District Attorney’s office has worked hard to prepare for its new responsibilities, which involves opposing motions to remove the case to Family Court when it is believed that the juvenile should

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139. Honorable Mary Anne Scattaretico-Naber, Family Court Judge, Yonkers Family Court, Panel on RIKERS: AN AMERICAN JAIL (Mar. 1, 2018).

140. Interview with Janet DiFiore, *supra* note 125.

141. Joel Stashenko, *Marks: Court System Can Handle ‘Raise the Age’ Law*, N.Y. LAW JOURNAL (Jan. 31, 2017, 4:02 PM), <https://www.law.com/newyorklawjournal/almID/1202778099777/>.

142. *See supra* Part III.

143. Interview with Janet DiFiore, *supra* note 125.

144. *Id.*

be tried as an adult.<sup>145</sup>

Regardless of the challenges ahead, the implementation process in New York and Westchester is slated to go smoothly thanks to great leadership throughout the state. Task forces and implementation committees have been established on both the state and county levels by leaders such as Chief Judge Janet DiFiore and Administrative Judge Kathie Davidson.<sup>146</sup> Additionally, there has been a great line of communication between the two levels, including a voluminous and detailed manual created by the state task force which even impressively accounts for the differences between rural and urban areas.<sup>147</sup> Furthermore, the county-run implementation committee set up by Judge Davidson in Westchester met monthly over the summer of 2018 to ensure that various departments were on schedule to execute the new law. This implementation committee consisted of assorted divisions such as the District Attorney's Office, Probation Department, Social Services Department, Legal Aid Society, attorneys for the children, and other courthouse judges and staff, who were all in constant contact with one another to make sure this process ran smoothly.<sup>148</sup>

One of the most concerning aspects of the implementation process is the funding. Having a great plan is one thing; having the means to realize that plan is another. Is the state going to keep to their promise to refund all counties who remain under the tap cap? Will funds run out and cause the entire scheme to fail? These are all questions that can only be answered retrospectively. For now, Chief Administrative Judge Lawrence Marks is estimating that addressing the new law will cost the courts \$5.7 million.<sup>149</sup> The "money is needed for the resources that will have to be shifted to Family Courts, as most of these younger defendants will no longer be handled in criminal

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145. Interview with Paul Noto, *supra* note 70; see also *supra* Part III.

146. Interview with Paul Noto, *supra* note 70.

147. *Id.*

148. *Id.*

149. Lauren Stanforth, *Lawmakers Ask About Costs for Raise the Age, Proposal to End Cash Bail*, TIMES UNION (Jan. 30, 2018, 6:50 PM), <https://www.timesunion.com/news/article/Testimony-talks-costs-for-Raise-the-Age-proposal-12537335.php>.

courts.”<sup>150</sup> Additional expenses will have to be addressed as time goes on.

#### E. A Brief Cost-Benefit Analysis

Funneling more teens to Family Court may increase short-term costs for state and local governments, but “evidence suggests that prosecuting more youthful offenders in juvenile justice courts will *save* taxpayers money.”<sup>151</sup> For Raise the Age supporters, the long-term benefits greatly outweigh the short-term upward adjustment in cost.

The expected long-term effects of the new law include, first and foremost, a reduction in recidivism and crime. As previously discussed, possessing the status of a criminal carries with it a stigmatization which can define an individual’s lifetime success. Being convicted of a crime as a juvenile hinders a child’s reputation before they even go out into the proverbial real world. This undesirable reputation will inevitably create barriers to employment, housing, and education, ultimately inhibiting juveniles from growing into contributing members of society. By treating eighteen-year-olds as juveniles in the eyes of the law, they are instead given a chance to become more productive citizens because they are given services which are geared toward changing their lives for the better.<sup>152</sup> Less repeat offending means a lower crime rate, less taxpayer money spent on housing prisoners, and safer communities to increase property values.<sup>153</sup> Presumably, less people locked up in prison means more money injected into the market because there will be more people working and spending their earned paychecks.<sup>154</sup>

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150. *Id.*

151. Wiltz, *supra* note 126 (emphasis added).

152. Dare it even be mentioned that giving police officers more services to provide seventeen- and eighteen-year-olds, including sending them to counseling, making them do community service, or even making them write a letter of apology, will give hope to the broken relationship between law enforcement and today’s youth? See Teresa Wiltz, *Children Still Funneled Through Adult Prisons, but States Are Moving Against It*, USA TODAY (June 22, 2017, 9:46 AM), <https://www.usatoday.com/story/news/2017/06/17/how-raise-age-laws-might-reduce-recidivism/400065001/>.

153. *Raise the Age Bill Summary*, *supra* note 57.

154. *Id.*

These long-term benefits are not merely speculation; this is what happened in other states who accomplished this feat before New York. “[I]f you look at case studies from other jurisdictions, you see that recidivism rates are reduced, costs are down and communities become safer.”<sup>155</sup> It seems as if one advantage of being the second-to-last state in the Nation to raise the age is that we can see what’s worked, and what has not, in the rest of the country. Furthermore, the Independent Democratic Conference’s Report on Economic Impact of Raising the Age of Criminal Responsibility in New York found that “when fully annualized the state could see savings of up to \$117.11 million annually in criminal justice system costs.”<sup>156</sup> The Report also found that “avoided costs for public welfare, social welfare and health care would save the state \$3.46 million annually while additional tax revenue from increased income would total \$0.6 million annually.”<sup>157</sup> But again, only time will tell.

V. “There’s Nothin’ You Can’t Do, Now You’re in New York”<sup>158</sup>

Many juvenile reform advocates are celebrating Raise the Age; however, most agree that this is not a resolution of all juvenile delinquency issues.<sup>159</sup> Instead, it should be considered a first step in the right direction. In order to really transform the future of the youth in this country, we cannot stop here because there is still so much work to be done.

In Part III, *supra*, it was mentioned that a motion by the District Attorney to keep the trial in the Youth Part will only be granted upon a finding of *extraordinary circumstances*,<sup>160</sup> a term

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155. Editorial, *‘Raise the Age’ A Victory for Juvenile Justice, but There’s Work to Be Done*, J. NEWS, May 14, 2017, at A16.

156. Klein, *supra* note 40.

157. *Id.*

158. JAY-Z FEAT. ALICIA KEYS, *Empire State of Mind*, on THE BLUEPRINT 3 (Atlantic Records 2009).

159. See Jesse Hamilton, *Raising the Age Is Just the Start*, BK READER (Mar. 31, 2017, 12:08 PM), <https://www.bkreader.com/2017/03/raising-age-just-start/>; Joseph R. Lentol & Dana Rachlin, Editorial, *‘Raise the Age’ Was Albany’s Best Act, but It’s Not Enough*, CRAIN’S N.Y. BUS. (June 30, 2017, 12:00 AM), <http://www.crainnewyork.com/article/20170630/OPINION/170639980/raise-the-age-was-albanys-best-act-but-its-not-enough>; *Raise the Age’ A Victory for Juvenile Justice*, *supra* note 155.

160. *Raise the Age Bill Summary*, *supra* note 57.

which was not statutorily defined. The next immediate step specifically related to Raise the Age should be to ensure that *extraordinary circumstances* is defined under the statute in a way which advances the goals of the new legislation. Therefore, it is important that judge's exercise their discretion on applying this law in a way which fosters rehabilitation over retribution.

Other steps that should be taken after enactment of the new law later this year include: better preparing juveniles for reentry to the proverbial real world by providing an in-depth transition process consisting of helping them apply for colleges and jobs and making sure they obtain their driver's license so that they have a means to get to college or work. Additionally, while in juvenile detention, release should be conditioned on achievements such as high school diplomas, GED certifications, or volunteer work in animal hospitals and soup kitchens.

In many cases it is already too late to change juveniles who are committing crimes at the age of seventeen and eighteen. Thus, juvenile reform should essentially begin at four to five years old. Preventative programs should be introduced to communities in order to ensure that adolescents stay out of the system altogether – then there will be no need for rehabilitation. Parents, teachers, tutors, out of school programs, and communities all owe it to their children to come together to ensure that every child has someone to love them, somewhere to live, and something to look forward to. Among the things that children need the most are people who care about them, a roof over their head, healthy connections with healthy role models, and exposure and access to opportunities.<sup>161</sup> Schools should prioritize mitigation of the mental health stigma by fervently promoting counseling, both with the individual and families, and identifying at-risk youth as soon as possible. Additionally, suspension and expulsion as a form of punishment should be abolished. It is senseless and ineffective to give an at-risk child, who does not even want to be in school to begin with, a *punishment* of doing exactly what he or she wants to do: skip school. Instead of writing off these children and skirting the underlying issue, schools should implement mandatory therapy

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161. Jeremy Kohomban, CEO, Children's Village, Panel on RIKERS: AN AMERICAN JAIL (Mar. 1, 2018).

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as a consequence. In therapy, it should be a goal to get to the root of why the child committed the wrong in the first place so that we as a community can prevent crime before it even starts.

## VI. Conclusion

The enactment of Raise the Age was New York's first major step toward juvenile reform. State and county leaders are working tirelessly to ensure that the adjustment period to the new law runs smoothly. It is incumbent on the State to keep its promise to fund the counties so they can effectively execute the new law. Beyond raising the age, communities should step up to address any signs of mental health problems or stabilization issues in the home so that crime can be prevented; it will only help in the long run. Besides, there is no group more deserving of protection than children.