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Extraordinary (Circumstances) Injustice

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NOTES

EXTRAORDINARY (CIRCUMSTANCES) INJUSTICE

MELISSA CAPALBO[†]

INTRODUCTION

> The box . . . . It's a small room, so you really don't move around a lot. You wake up, and there's a toilet right next to your head. You look out the window and you see birds flying, and that only leads your mind into wanting freedom more. And since it's a small room, it makes you think crazy. . . . Right now, I'm five-foot-seven. I grew. I came here when I was five feet tall.[1]

This is Rikers Island. The 19-year-old boy who shared his story is certainly not alone. Thousands of youth from throughout New York State grew up incarcerated on Rikers Island, which is among the "world's worst" correctional facilities.[2] Since its historic opening in the 1930s, the facility has been plagued by "drug use, corrupt correction officers, violence, squalor, [and] gang consolidation."[3] Yet, it is the same place that New York has allowed children to call their home for the last several decades. In 2015, Governor Andrew Cuomo raised awareness for the significant problem of treating "troubled kids" as adults and declared, in his Raise the Age campaign, that the minimum age for criminal responsibility "must change."[4]

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[1] Maurice Chammah, et al., *Inside Rikers Island, Through the Eyes of the People Who Live and Work There*, N.Y. MAG., June 28, 2015, at 4–5.

[2] *Id.* at 1.

[3] *Id.*

[4] Press Release, Andrew Cuomo, Governor, New York, Governor Cuomo Launches Campaign Rallying Support to "Raise the Age" in New York (Mar. 9, 2015), https://www.governor.ny.gov/news/governor-cuomo-launches-campaign-rallying-support-raise-age-new-york [https://perma.cc/E6ZJ-J6NZ].

In 2017, the New York Legislature raised the age of criminal responsibility from sixteen years old to eighteen years old but left a substantial loophole. The phrase "extraordinary circumstances" within its Raise the Age ("RTA") legislation provides this gray area, as the statute reads, "[t]he court shall deny the motion to prevent removal of the action in [the] youth part unless the court makes a determination upon such motion by the district attorney that *extraordinary circumstances* exist that should prevent the transfer of the action to family court."[5] Since the Legislature failed to define what factors to examine or specify crimes that constitute such a finding, the phrase has been applied both broadly and arbitrarily. With little guidance, courts have examined factors such as prior juvenile history—in violation of the Family Court Act[6]—as well as culpability—at odds with the presumption of innocence.[7] Moreover, some courts have used mental illness as a way to entirely mitigate a finding of extraordinary circumstances, perhaps believing the juvenile justice system is more equipped to handle mental illness.[8]

Part I of this Note will provide an overview of the history of the juvenile justice system using a four-wave approach, as categorized by the National Campaign to Reform State Juvenile Justice Systems.[9] It will focus on New York specifically as it pertains to the fourth, and current, wave of reform. Part II will outline the problems caused by the Legislature's failure to define "extraordinary circumstances." It will detail the ways in which courts have struggled to determine factors to examine and how to use those factors, specifically focusing on prior juvenile history, culpability, and mental illness. Lastly, Part III will explore the possibilities for change through the lens of Connecticut and Pennsylvania's RTA statutes, suggesting a set of appropriate factors to examine when deciding if extraordinary circumstances exist. Further, it will explore new ways to approach mental illness among alleged youthful offenders and suggest blended sentencing laws as a way to mitigate various problems associated with a preliminary assessment of culpability.

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[5] N.Y. CODE CRIM. PROC. LAW § 722.23(1)(d) (McKinney 2019) (emphasis added).

[6] N.Y. FAM. CT. ACT § 381.2(2) (McKinney 1983).

[7] *See In re* Winship, 397 U.S. 358, 366 (1970).

[8] People v. D.L., 62 Misc. 3d 900, 907 (Family Ct. N.Y. Cnty. 2018).

[9] GIUDI WEISS, NAT'L CAMPAIGN TO REFORM STATE JUV. JUST. SYS., THE FOURTH WAVE: JUVENILE JUSTICE REFORMS FOR THE TWENTY-FIRST CENTURY 3–4 (2013).

I. HISTORY OF THE JUVENILE JUSTICE SYSTEM

A. Four Waves of Reform

Juvenile justice reform has been categorized into four "waves," beginning in the late nineteenth century.[10] The first wave began in 1899 in Chicago when the earliest juvenile court was established to "provide rehabilitation and protective supervision for youth."[11] In the twentieth century, scientific advancements led to studies of the differences in brain activity between adults and children that suggested youth are less mature and less capable of understanding the consequences of their behavior.[12] In addition, scientific evidence supported that youth are "prime candidates for rehabilitation" and thus should generally be kept out of the criminal justice system.[13] Consequently, other states began to follow the trend of treating youth separately from adults in the criminal justice system.[14]

By 1925, forty-six states had established juvenile courts.[15] Generally, these courts were informal, handling only minor alleged offenses, and judges played the role of "child supervis[ors]."[16] This setting was "intended to be a place where the child would receive individualized attention from a concerned judge."[17] Moreover, "delinquency [was treated] as a social problem instead of as a crime."[18] Unfortunately, due to a large influx of youth into these juvenile courts, and early goals of rehabilitation having proven hard to achieve, many youths were incarcerated and committed to juvenile detention centers.[19] The reversion to the former policy of treating children as adults was

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[10] *Id.* at 3.

[11] *Juvenile Justice History*, CTR. ON JUV. AND CRIM. JUST., http://www.cjcj.org/education1/juvenile-justice-history.html [https://perma.cc/2QY6-PGCE] (last visited Feb. 28, 2021).

[12] Samantha Mumola, Comment, *The Concrete Jungle: Where Dreams Are Made of . . . and Now Where Children Are Protected*, 39 PACE L. REV. 539, 544–545 (2018).

[13] *Id.* at 545.

[14] *Juvenile Justice History*, *supra* note 11.

[15] CHRISTOPHER A. MALLETT & MIYUKI FUKUSHIMA TEDOR, JUVENILE DELINQUENCY: PATHWAYS AND PREVENTION 30 (2019).

[16] *Id.*

[17] *Juvenile Justice History*, *supra* note 11.

[18] MALLETT & TEDOR, *supra* note 15, at 31. Around this time, juvenile delinquency was defined for the first time. *Id.* at 30. For example, an Oregon law defined these children as "truant, idle, and disorderly." *Id.*

[19] *Id.* at 31.

attributed to the misguided consensus that "nothing works" to rehabilitate juvenile offenders.[20]

As incarceration became the preferred method of disposition, juvenile detention facilities were recognized as overcrowded and lacked much of the rehabilitative services that states had been previously focused on, including therapy and group treatment.[21] Conditions in the areas of food, hygiene, clothing, and living accommodations—all essential components of basic humane treatment—were deplorable and inadequate.[22] Consequently, the declining physical and mental health of incarcerated youth developed into a serious problem.[23]

Moreover, although children were being treated as adults, they were barred from the same legal protections because of the location of the proceedings.[24] Scholars at the time debated whether children should enjoy the same constitutional safeguards as adults.[25] The leading justification for the distinction was the nature of the new system to act "in loco parentis"[26] based on the legal doctrine of *parens patriae*, meaning "State as Parent," giving the State the sole authority to protect a child in his person and property.[27] Another justification was that a child was not entitled to such protections because he was just that, a child.[28] Nonetheless, the juvenile justice system was plagued with a lack of clear standards of fairness.[29] As a result, a new social and political movement began for more fair and humane treatment of alleged, youthful offenders.[30]

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[20] *Id.* at 33.

[21] *Id.* at 32.

[22] Dale G. Parent, *Conditions of Confinement*, 1 JUV. JUST. 2, 3 (1993).

[23] *Id.* at 6. The Office of Juvenile Justice and Delinquency prevention reported that "Suicidal behavior was a serious problem in juvenile facilities. In 1990, 10 juveniles in confinement killed themselves, a rate roughly double that of youth in the general population." *Id.* Another 1.6 % of the juveniles in confinement committed some form of suicidal act in the past thirty days of completing a survey. *Id.*

[24] MALLETT & TEDOR, *supra* note 15, at 33.

[25] Karen L. Atkinson, *Constitutional Rights of Juveniles: Gault and Its Application*, 9 WM. & MARY L. REV. 492, 494 (1967).

[26] *Id.* at 493.

[27] *Juvenile Justice History*, *supra* note 11.

[28] Atkinson, *supra* note 25, at 493.

[29] *Id.* at 494.

[30] MALLETT & TEDOR, *supra* note 15, at 32. Critics argued, "juvenile courts could no longer justify their broad disposition powers and invasion of personal rights on humanitarian grounds." *Id.* at 33.

The second wave began in the 1960s,[31] when the U.S. Supreme Court began solidifying the juvenile justice system by extending youth's due process rights, including the right to counsel and the right to remain silent.[32] In 1967, in *In Re Gault*, the Court came to an important decision concerning juvenile justice reform.[33] There, the Court held that a fifteen-year-old boy's rights were violated when the police arrested him and failed to notify his parents or advise him of the right to counsel and the right against self-incrimination during questioning.[34] Despite the movement toward establishing a stable juvenile justice system, juvenile offending statistics in the 1980s and 1990s were alarmingly high, specifically for violent crime.[35] Public outrage grew concerning the lack of punishment for youthful offenders, paving the way for the third wave of reform,[36] punitive laws "designed to get tough on juvenile crime."[37]

During the "tough on crime" era, transfer laws were, in essence, a mechanism to transfer youth from the juvenile justice system to the criminal justice system for prosecution.[38] Reforms made transfers to criminal proceedings much easier by "lower[ing] the minimum age for transfer, increas[ing] the number of transfer-eligible offenses, or expand[ing] prosecutorial discretion and reduc[ing] judicial discretion in transfer

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[31] WEISS, *supra* note 9, at 3.

[32] *In re* Gault, 387 U.S. 1, 55 (1967). As Justice Black explained in his concurring opinion,

> [w]here a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment.

Id. at 61 (Black, J., concurring). Around the same time, juveniles were also provided with Fourth Amendment protections of search and seizure and the right to a probable cause hearing pursuant to a warrantless arrest. *See* New Jersey v. T.L.O., 469 U.S. 325, 341 (1985); Moss v. Weaver, 525 F.2d 1258, 1260 (5th Cir. 1976).

[33] 387 U.S. at 55–56.

[34] *Id.*

[35] CHARLES PUZZANCHERA, OFF. OF JUV. JUST. AND DELINQ. PREVENTION, JUVENILE ARRESTS 2008, at 5 (2009). For example, juvenile arrest rates for murder more than doubled from the mid 1980s to around 1993; arrest rates for aggravated assault doubled between 1980 and 1994; arrest rates for forcible rape were at an all-time high in 1991; and robbery arrest rates grew substantially between the 1980s and mid-1990s. *Id.* at 6.

[36] WEISS, *supra* note 9, at 3.

[37] RICHARD E. REDDING, OFF. OF JUV. JUST. AND DELINQ. PREVENTION, JUVENILE TRANSFER LAWS: AN EFFECTIVE DETERRENT TO DELINQUENCY? 1 (2010).

[38] *Id.*

decisionmaking."[39] Beginning in the 1980s, nearly every state adopted transfer laws of various sorts.[40]

The main types of transfer laws fall into three categories: (1) judicial waiver laws; (2) prosecutorial discretion or concurrent jurisdiction laws; and (3) statutory exclusion laws.[41] First, states with judicial waiver laws allow, on a case-by-case basis, juvenile courts to waive jurisdiction and transfer the case for criminal prosecution.[42] Second, prosecutorial discretion laws allow prosecutors the sole ability to determine whether a case involving youth should be brought under juvenile or criminal court jurisdiction.[43] Lastly, statutory exclusion laws allow criminal courts exclusive jurisdiction over youth cases.[44] Additionally, many states also have "once adult/always adult" laws, reverse waiver laws, and blended sentencing laws.[45] Once adult/always adult laws entail the automatic exclusion of youth from the juvenile justice system if they have been "criminally prosecuted in the past."[46] Reverse waiver laws allow youth, whose cases begin in the criminal justice system, to petition to have their cases transferred to the juvenile courts.[47] Lastly, blended sentencing laws allow judges discretion to impose criminal sentences on juveniles if the case is in the juvenile courts, or impose juvenile dispositions if the case is in the criminal justice system.[48]

The justification for these new reforms was based on the idea that punishment deters juvenile crime.[49] However, studies conducted in the late 1990s and early 2000s revealed that "[j]uveniles with the highest recidivism rates were those who

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[39] *Id.*

[40] PATRICK GRIFFIN ET. AL., OFF. OF JUV. JUST. AND DELINQ. PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING 2 (2011).

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] REDDING, *supra* note 37, at 2. Deterrence can be measured by general deterrence—which seeks to deter any "would-be juvenile offenders"—or specific deterrence—which seeks to deter specific individuals from recidivating (commonly measured by rearrests). *Id.* at 2, 4.

were incarcerated after being tried in the criminal court."[50] It soon became evident that the new practice of transferring youth had an unintended effect of promoting criminality among young people.[51] In 2005, the Supreme Court revisited the issues within the juvenile justice system in *Roper v. Simmons*, holding that youth under the age of eighteen are ineligible for the death penalty because "that is the point where society draws the line for many purposes between childhood and adulthood." [52] The holding sparked new awareness and inspired new reforms across the country.[53] Consequently, states sought to reverse the damage done by transfer laws by raising the age of juvenile court jurisdiction.[54] This marked the beginning of the fourth and current wave "aimed at holding young offenders accountable for their actions in developmentally appropriate ways[,] reducing reoffending[,] and ensuring public safety."[55]

B. New York's Fourth Wave

Throughout the twentieth century, New York prided itself on being a progressive leader in the development of juvenile justice.[56] In 1903, the Legislature created separate youth "parts" in the Superior Court, and in 1909 passed a law mandating that a child under the age of sixteen could not be tried as an adult unless charged with a capital offense.[57] The most notable reform came in 1962 when the Legislature passed the Family Court Act, "establish[ing] a single Family Court to manage cases affecting the family, including juvenile delinquency cases, neglected

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[50] *Id.* at 4. For example, a study by Fagan in 1996 revealed that 91 percent of youth who were prosecuted for robbery in criminal court recidivated, but only 73 percent of youth who were prosecuted for the same crime in juvenile court recidivated. *Id.*

[51] *Id.*

[52] Roper v. Simmons, 543 U.S. 551, 554 (2005).

[53] Mumola, *supra* note 12, at 548.

[54] COMM'N ON YOUTH, PUB. SAFETY & JUST., FINAL REPORT OF THE GOVERNOR'S COMMISSION ON YOUTH, PUBLIC SAFETY AND JUSTICE 3 (2015) [hereinafter FINAL REPORT], https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice_0.pdf [https://perma.cc/8AEW-R3MJ].

[55] WEISS, *supra* note 9, at 3–4.

[56] FINAL REPORT, *supra* note 54.

[57] *Id.* A "part" is a specialized, segregated court within the NYS court system. *Supreme Court, Criminal Term, New York County*: *About the Court*, NYCOURTS.GOV, http://ww2.nycourts.gov/courts/1jd/criminal/about.shtml [https://perma.cc/2VY5-5AZM] (last visited Feb. 28, 2021). For example, the Supreme Court, Criminal Term is divided into multiple parts, including an integrated domestic violence part, a mental health part, a narcotics part, and a youth part. *Id.*

children cases, cases involving persons in need of supervision, and cases involving paternity, custody, adoption, and related issues."[58] More reforms followed in the 1970s, including the Juvenile Justice Reform Act of 1976, which required Family Court judges to consider the best interests of the child and the need to protect the community.[59] However, as the country entered the fourth wave of reform, New York State suddenly became a static outlier.[60] While a majority of states raised the age of adult criminal responsibility to seventeen years old, New York remained one of only two states that "still treated sixteen-year-olds as adults in the eyes of the law."[61]

In 2013, New York's Adolescent Diversion Program, launched one year earlier, had revealed "promising result[s]" for change.[62] The State then officially launched the Raise the Age campaign.[63] Governor Cuomo made the campaign a top priority, traveling around the state, raising awareness, and establishing a Commission on Youth, Public Safety, and Justice.[64] The tragic passing of Kalief Browder—a sixteen-year-old boy who took his own life after being held at Rikers Island for a suspected robbery for over 1,000 days, 700 of which were spent in solitary confinement[65]—led to public outrage and helped the movement gain momentum.[66] After years of campaigning, the New York State Raise the Age bill was signed into law on April 10, 2017.[67]

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[58] FINAL REPORT, *supra* note 54, at 4 (footnote omitted).

[59] *Id.*

[60] *Id.* at 3–4.

[61] Mumola, *supra* note 12, at 542. Numerous states, including Massachusetts, had even raised the age requirement to eighteen years old, and Vermont was the first state to raise the age to twenty-one years old. Aidan Ryan, *Crime Bill Would Redefine Juveniles as up to Age 21*, BOS. GLOBE (July 9, 2019, 8:14 PM), https://www.bostonglobe.com/metro/2019/07/09/crime-bill-would-redefine-juveniles-age/maHshbBT6QaaX9ooVDVidN/story.html.

[62] Mumola, *supra* note 12, at 548. Studies of the program found a "decreased re-arrest rate for felonies coupled with an absence of harm to public safety." *Id.*

[63] *Id.*

[64] *Id.* at 548–49.

[65] *Id.* at 540–41.

[66] *Id.* at 549.

[67] *Id.*

C. New York's RTA

The New York Legislature successfully raised the age of criminal responsibility to eighteen years old.[68] The new law called for implementation in two waves: the first wave raised the age to seventeen years old on October 1, 2018, and the second wave raised the age to eighteen years old beginning on October 1, 2019.[69] Youths charged with crimes are now placed into one of four categories: (1) Juvenile Delinquent ("JD"); (2) Juvenile Offenders ("JO"); (3) Youthful Offender ("YO"); and (4) Adolescent Offenders ("AO")—a new category under RTA classifying sixteen and seventeen-year-olds who are charged with felonies.[70] Most notably, RTA categorized sixteen and seventeen year olds depending on the type of crime charged.[71] For example, alleged non-criminal violations, such as vehicle and traffic violations, are automatically sent to local courts.[72] AOs who are charged with New York Penal Law misdemeanors are automatically sent to Family Court.[73] AOs who are charged with felonies, on the other hand, are subject to a complex procedure, depending on a variety of factors.[74]

When an AO is charged with a violent felony, the case begins in the Youth Part.[75] However, RTA created a three-part

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[68] *Raise the Age (RTA)*, NYCOURTS.GOV, https://www.nycourts.gov/courthelp/Criminal/RTA.shtml [https://perma.cc/BH6H-5XHJ] (last updated Dec. 23, 2019).

[69] *Id.* The gradual shift was to slowly prepare both systems for the extraordinary change.

[70] *Crimes Committed by Children Between 7–18*, NYCOURTS.GOV, https://www.nycourts.gov/courthelp/Criminal/crimesByChildren.shtml [https://perma.cc/UT5J-29T6] (last updated Dec. 23, 2019). Before Raise the Age ("RTA"), a child who was at least seven years old but under sixteen years old was considered a juvenile delinquent, and cases were adjudicated in Family Court. *Id.* A child who is between the ages of thirteen and fifteen and commits a serious felony is considered a juvenile offender. *Id.* Juvenile offender cases are adjudicated in the Youth Part of Supreme or County court but may be transferred to Family Court. *Id.* A child who is at least fourteen years old but under nineteen may be treated as a youthful offender and may be eligible, subject to certain requirements, to have their records automatically sealed. *Id.*

[71] *Raise the Age (RTA)*, NYCOURTS.GOV, https://www.nycourts.gov/courthelp/Criminal/RTA.shtml [https://perma.cc/BH6H-5XHJ] (last updated Dec. 23, 2019).

[72] *Raise the Age Flowchart*, NYCOURTS.GOV, https://www.nycourts.gov/courthelp/pdfs/RTA_flowchart.pdf [https://perma.cc/XC5C-SHDW] (last visited Feb. 28, 2021).

[73] *Id.*

[74] *Id.*

[75] *Id.*

statutory test to determine whether the case is eligible for transfer to Family Court.[76] The court will evaluate cases for a crime involving: (1) significant physical injury; (2) display of a weapon; or (3) sex offenses.[77] If one or more of these factors are present, the case will remain in the Youth Part for adjudication, unless the District Attorney ("DA") consents to transfer the case to Family Court.[78] If no factor is present, the case will automatically be transferred to Family Court, unless the DA files a motion within thirty days to block the transfer.[79] The standard for this motion is a showing of "extraordinary circumstances," such that the case must remain in the Youth Part.[80] If the DA succeeds in showing extraordinary circumstances, the case will remain.[81]

When an AO is charged with a non-violent felony, the case also begins in the Youth Part.[82] The case is automatically transferred from the Youth Part to Family Court unless the DA files a motion to block the transfer within thirty days.[83] Again, the standard for this motion to block the transfer is a showing of extraordinary circumstances.[84] If the DA succeeds in showing extraordinary circumstances, the case remains in the Youth Part.[85] RTA created this new statutory standard of "extraordinary circumstances,"[86] leaving an enormous amount of discretion to courts, but very little guidance, which has recently caused concern among the legal community.[87] Part II of this Note will explore this new legislation's undefined phrase, focusing on the courts' consideration of certain factors including prior juvenile history, culpability, and mental illness.

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[76] *Id.*
[77] *See id.*
[78] *Id.*
[79] *See id.*
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.* Enormous discretion is also granted to the District Attorney's ("DA") office, in that they have the opportunity to transfer cases to Family Court, despite a finding of one or more statutory factors. *See id.*
[86] N.Y. CRIM. PROC. LAW § 722.23 (McKinney 2019).
[87] *See* 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 FORD. URB. L.J. 241, 279 n.226 (2017).

II. WHAT ARE EXTRAORDINARY CIRCUMSTANCES?

A. New York's Gray Area

RTA's undefined standard of "extraordinary circumstances" has been considered "one of the largest gray areas present within the new law" because of the extraordinary discretion granted to courts.[88] Commentators recognize that this could "prove disastrous if given a broad interpretation"[89] and essentially gives the State "discretion to ignore their own age restrictions."[90] For example, one commentator explained,

> [O]n one hand, the new law expands an adult court judge's authority to impose a therapeutic position toward young teens; 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.[91]

Courts have attempted to decide whether extraordinary circumstances exist in youth felony cases, beginning with the legislative history and a dictionary definition of "extraordinary."[92] Courts have inferred that the Legislature intended that most cases would be transferred to Family Court, except for what has been described as "extremely rare and exceptional cases."[93] The dictionary definition supports that view, defining extraordinary as "far from common . . . very outstanding . . . : very remarkable."[94] However, neither the legislative history nor the definition of extraordinary have helped courts make consistent determinations.[95] As a result, courts have resorted to

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[88] Mumola, *supra* note 12, at 551.

[89] Patrick Harty, *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, 1103 (2017); *see* Lippman, *supra* note 87.

[90] Eli Hager, *The Fine Print in New York's Raise the Age Law*, THE MARSHALL PROJECT (Apr. 14, 2017), https://www.themarshallproject.org/2017/04/14/the-fine-print-in-new-york-s-raise-the-age-law [https://perma.cc/3289-8JE3].

[91] Mumola, *supra* note 12, at 551.

[92] People v. J.P., 63 Misc. 3d 635, 646–50 (Sup. Ct. Bronx Cnty. 2019).

[93] *Id.* at 647.

[94] *Id.* at 649–50 (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 807 (1986)).

[95] In *People v. T.R.*, the court found that an Adolescent Offender ("AO") charged with allegedly conspiring to make a terroristic, bomb threat to his school was not sufficient to amount to extraordinary circumstances because "conspiring with . . . other children is hardly extraordinary" and "extraordinary circumstances should not be based solely upon the sheer number of individuals affected." People v. T.R., 62 Misc. 3d 1219(A), 2018 N.Y. Slip Op. 51976(U), at *3 (Family Ct. Erie Cnty.

determinations based on a variety of inappropriate factors: prior juvenile history, culpability, and mental illness.

B. Inconsistent Application Diminishes Effectiveness

1. Violating the Family Court Act

One factor that courts rely on in their determination of extraordinary circumstances is prior juvenile history. For example, in *People v. J.P.*, the court, in considering a motion by the prosecution to block the transfer of a youth to Family Court based on extraordinary circumstances, noted the youth's "recalcitrant recidivism."[96] Specifically, the court recognized the youth's prior delinquency and youthful offender adjudications, despite acknowledging that the youth had no *criminal* record.[97] Other courts have considered the youth's past violence,[98] or "extensive contacts" with the criminal justice system as an aggravating factor in the determination.[99] The justification given for doing so is that Family Court is not equipped to rehabilitate juvenile offenders and prevent reoffending.[100] However, there are two major problems with this justification. First, the justification is undermined by extensive studies finding that juvenile recidivism is higher among youth who are prosecuted in the criminal justice system.[101] Second, and most important, examining past juvenile delinquency is a direct violation of the Family Court Act.[102]

The Family Court Act § 381.2 provides, in relevant part, that the mere "fact that a person was before the family court . . . is [not] admissible as evidence against him or his interests in any other court."[103] An adjudication in Family Court is not

Dec. 21, 2018). This seemingly fits the dictionary definition of "extraordinary," yet the court was not convinced it was enough.

[96] 63 Misc. 3d at 651.

[97] *Id.*

[98] *See* People v. A.G., 62 Misc. 3d 1210(A), 2018 N.Y. Slip Op. 61693(U), at *2 (Sup. Ct. Queens Cnty. Dec. 20, 2018).

[99] People v. M.M., 64 Misc. 3d 259, 262 (Nassau Cnty. Ct. 2019) (explaining the youth's "extensive contacts" with the criminal justice system as extraordinary circumstances, including a "prior felony conviction and four prior misdemeanor convictions as a juvenile delinquent").

[100] *Id.* at 268.

[101] *See supra* note 50 and accompanying text.

[102] N.Y. FAM. CT. ACT § 381.2 (McKinney 2020).

[103] *Id.*

considered a criminal conviction,[104] and such records are kept confidential.[105] In *People v. M.M.*, the court rejected the DA's arguments against transfer, citing to the New York Court of Appeals for the proposition that "[a]s a rule, a juvenile delinquency adjudication cannot be used against the juvenile in any other court *for any other purpose*."[106] The rationale for this rule fits the purpose of the RTA, which is to treat youthful offenders as children in need of rehabilitation and treatment. Although RTA made significant changes to the juvenile justice system in New York, it did not intend to effectively override existing Family Court statutes and rules. Furthermore, the court there articulated that the burden rests with the legislature, not the courts, to change existing statutes and allow past adjudications to be assessed with respect to transfer.[107]

2. At Odds with the Presumption of Innocence

Another factor that courts rely on in their determination of extraordinary circumstances is culpability. For example, the court in *People v. J.W.* assessed whether the youth was the "mastermind," or "leader of the criminal activity;"[108] the court in *People v. M.M.* assessed whether the youth was the "sole participant" in the crime;[109] and the court in *People v. J.P.* assessed whether the youth was the "lesser actor" in the crime.[110] The justification for this assessment was to determine whether the AO is "amenable to [rehabilitation] services" of Family Court,[111] equating amenability to services with lesser culpability in the crime.[112] However, courts have seemingly failed to recognize that the determination of extraordinary circumstances

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[104] *See* N.Y. CRIM. PROC. LAW § 720.35 (McKinney 2014).

[105] *See* N.Y. FAM. CT. ACT § 381.3 (McKinney 2019).

[106] People v. M.M., 64 Misc. 3d 259, 267 (Nassau Cnty. Ct. 2019) (emphasis added) (citing Green v. Montgomery, 95 N.Y.2d 693, 697 (2001)).

[107] *Id.* at 270 ("If the fact that an individual was previously adjudicated a juvenile delinquent is to be considered in assessing factors against him with respect to the potential removal of a case from the Youth Part to the Family Court, then such consideration must be specifically authorized by the Legislature, not by this Court.").

[108] People v. J.W., 69 Misc. 3d 1215(A), 2019 WL 1576074, at *3 (Family. Ct. Erie Cnty. March 28, 2019).

[109] *M.M.*, 64 Misc. 3d at 262.

[110] People v. J.P., 63 Misc. 3d 635, 643 (Sup. Ct. Bronx Cnty. 2019).

[111] *J.W.*, 2019 WL 1576074, at *3.

[112] People v. D.L., 62 Misc. 3d 900, 905 (Family Ct. Monroe Cty. 2018) ("[C]hildren are less culpable in the criminal context than adults and more amenable to change.").

is simply a ruling to determine which justice system the case belongs in. A youth's future is significantly determined by the court that his or her case ends up in. For example, it is the difference between a public criminal conviction, aimed at punishment, and a private disposition, aimed at rehabilitation. At this preliminary stage of the proceedings, the courts in these cases are already weighing how guilty the youth is. Culpability, defined in the legal sense, refers to blameworthiness, and scholars note that "considerations of culpability . . . are most crucial to an adjudication of guilt at a trial."[113] Thus, assessing culpability at this point in the case has troubling implications for a youth's right to the presumption of innocence—a fundamental aspect of American jurisprudence.[114]

In 1970, the United States Supreme Court held that preserving the presumption of innocence for youth would not disturb New York's juvenile justice policies, including the policy that a youth's final disposition is not considered a criminal conviction.[115] Despite the Court's failure to provide youth in the juvenile justice system with the right to a trial,[116] youth are still entitled to have an attorney,[117] present their defenses, and hold the Government to the high standard of proof beyond a reasonable doubt.[118] Since the burden rests on the DA, by way of motion practice, to provide the court with a showing of extraordinary circumstances, youth are unable to put forth an effective defense, including one that diminishes culpability, because of the inability to obtain discovery, confront witnesses, or suppress evidence.[119] Moreover, a court's early assessment of culpability presumably carries weight in subsequent proceedings. For example, rather than having his or her case heard by an

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[113] R.J. Spjut, *The Relevance of Culpability to the Punishment and Prevention of Crime*, 19 AKRON L. REV. 197, 201 (1985).

[114] Estelle v. Williams, 425 U.S. 501, 503 (1976) (explaining "[t]he presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice"). In 1970, the Court held that "[t]he same considerations that demand extreme caution in factfinding to protect the innocent adult apply as well to the innocent child." *In re* Winship, 397 U.S. 358, 365 (1970).

[115] *Winship*, 397 U.S. at 365–66.

[116] McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) (holding that a trial by jury in the juvenile justice system is not required under the Constitution).

[117] *See In re* Gault, 387 U.S. 1, 55 (1967); *see supra* text accompanying note 32.

[118] *Winship*, 397 U.S. at 368.

[119] Even though "[b]oth parties may be heard and submit information relevant to the [Court's] determination," a defendant is not required to prove their innocence; rather, the burden rests entirely on the DA. N.Y. CRIM. PROC. LAW § 722.23(2)(b).

impartial judge once the proper jurisdiction is determined, a court has essentially already ruled that the youth is culpable, or legally responsible for the crime. Therefore, the proper procedure is crucial, especially considering the consequences of having a case heard in Family Court versus Criminal Court—procedure, outcome, and burdens of proof differ tremendously.

Courts have also relied on RTA's three statutory factors—significant physical injury, display of a weapon, or sex offense—to aid in the determination of extraordinary circumstances.[120] The factors are assessed by a standard of preponderance of the evidence[121]—the same standard of proof weighed in Family Court proceedings. For example, in *People v. Y.L.*, the AO was charged with attempted gang assault in the first degree based on his participation in an alleged assault.[122] The court held that the People met the burden of a preponderance of the evidence that the AO caused serious physical injury during the commission of the crime.[123] If these cases are then transferred to Family Court, an essential component of the case has already been determined by the same standard the court would be using to decide the entirety of the case. Thus, using the preponderance standard for purposes of procedure to determine which court system the case belongs in is improper because the burden of overcoming that standard and furnishing an effective defense is almost impossible. Ultimately, the case is decided before the court even determines which justice system it belongs in.

3. Outweighing the Balance Using Mental Illness

One last factor that courts rely on in their determination of extraordinary circumstances is mental illness. Rather than considering mental illness as a single factor in an overall determination, courts have seemingly used this as a complete defense to mitigate any finding of extraordinary circumstances.[124] In *People v. R.M.*, the AO was charged with aggravated cruelty to animals based on an allegation that she killed a cat and removed its organs.[125] The court found that no extraordinary

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[120] *See* N.Y. CRIM. PROC. LAW § 722.23 (McKinney 2019).

[121] *Id.*

[122] People v. Y.L., 64 Misc. 3d 664, 665 (Monroe Cnty. Ct. 2019).

[123] *Id.* at 670.

[124] *See, e.g.*, People v. R.M., 63 Misc. 3d 541, 547–48 (Westchester Cnty. Ct. 2018); People v. J.P., 63 Misc. 3d 635, 639, 650 (Sup. Ct. Bronx Cnty. 2019); People v. D.L., 62 Misc. 3d 900, 907 (Family Ct. Monroe Cnty. 2018).

[125] 63 Misc. 3d at 542.

circumstances existed based on the youth's long history of mental illness, despite the court's examination of the crime as "especially depraved or sadistic."[126] In *People v. D.L.*, the AO was charged with attempted arson based on allegations that she intentionally set fire to her former partner's home with her child inside.[127] The court held that no extraordinary circumstances existed, in large part because of the "assessment that she needed to speak to a counselor and receive mental health assistance."[128] While mental illness is undoubtedly a cause for concern, especially among youth in the juvenile justice system,[129] there is no guarantee that youth who have a mental illness would be better off in the juvenile justice system as opposed to the Youth Part of the criminal justice system.

Scholars explain the complex relationship between mental illness and contact with the criminal justice system by stating, "[m]any end up in the system simply because they need mental health services and can't access them in their community."[130] However, only a small percentage of youth offenders with mental health problems have access to treatment in the juvenile justice system.[131] For example, "[a] national study found that even if juvenile justice facilities reported having the capacity to provide services to youths in their care, youths with a severe mental health disorder often did not receive any emergency mental health services."[132] In addition, studies conducted in 2016 revealed that juvenile detention facilities were largely overcrowded and lacked necessary treatment or services, potentially leading to worsening mental health conditions.[133] Thus, completely outweighing extraordinary circumstances based

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[126] *Id.* at 548.

[127] 62 Misc. 3d at 903.

[128] *Id.* at 907.

[129] NAT'L CONF. STATE LEGISLATURES, MENTAL HEALTH NEEDS OF JUVENILE OFFENDERS 2 (2011), http://www.ncsl.org/documents/cj/jjguidebook-mental.pdf [https://perma.cc/3SDS-WL2P] ("Between 65 percent and 70 percent of the 2 million children and adolescents arrested each year in the United States have a mental health disorder.").

[130] *Juvenile Justice*, NAT'L ALLIANCE ON MENTAL ILLNESS, https://namibuckspa.org/about-nami-bucks-county/public-policy/juvenile-justice/ [https://perma.cc/X55V-VPWS] (last visited Oct. 19, 2020).

[131] OFF. JUV. JUST. AND DELINQ. PREVENTION, INTERSECTION BETWEEN MENTAL HEALTH AND THE JUVENILE JUSTICE SYSTEM 4 (2017), https://www.ojjdp.gov/mpg/litreviews/Intersection-Mental-Health-Juvenile-Justice.pdf [https://perma.cc/4QG8-VBQ7] (last updated July 2017).

[132] *Id.* at 5.

[133] *See id.* at 5.

on mental illness alone—in the hopes that youth will receive adequate treatment in the juvenile justice system—is not only improper, but it is also adding to the problem of overcrowding and diminishing the incarcerated population's access to treatment. While it is recognized that more must be done to address mental health problems among youth, outweighing extraordinary circumstances is not the proper avenue for change. Part III will explore the possibilities for change, specifically suggesting the implementation of new ways to assess mental illness among youth.

III. PROPOSALS FOR CHANGE

A. A Model from Connecticut and Pennsylvania's Raise the Age Laws

Although New York has fallen short, it can learn from other states, like Connecticut and Pennsylvania. In Connecticut, youth begin in family court and may be transferred to criminal court pursuant to certain charged offenses or present factors.[134] Cases are automatically transferred if the youth is charged with a capital felony, a class A felony, or certain class B felonies.[135] The statute denies the automatic transfer of youth to the criminal justice system if the charge is, for example: (1) manslaughter in the first degree; (2) burglary in the first degree; (3) arson in the second degree; or (4) robbery in the first degree.[136] However, unlike New York's motion practice, a transfer hearing is instead conducted to determine eligibility for transfer.[137] Specific factors that are examined include (1) probable cause to believe the youth has committed the alleged act; (2) the best interests of the child and the community; (3) mental disease or intellectual disability; and (4) seriousness of the alleged offense.[138] The transfer hearing, unlike motion practice, takes into account youth's rights under the Constitution.[139] At the hearing, "the child has the right to counsel, to confront witnesses, to obtain discovery of

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[134] CONN. GEN. STAT. ANN. § 46b–127(a)(1) (West 2019).

[135] *Id.*

[136] CONN. GEN. STAT. ANN. § 46b–127(3) (West 2019).

[137] *Id.*

[138] *Id.* Probable cause, for example, is a common-sense determination and does not require as much preliminary adjudication as culpability.

[139] SANDRA NORMAN-EADY, ET. AL., CONN. GEN. ASSEMBLY, OFF. OF LEGIS. RSCH., RE: JUVENILE JUSTICE (1994), https://www.cga.ct.gov/PS94/rpt/olr/htm/94-R-0919.htm [https://perma.cc/VZC6-TN8G].

vindicating information, and to suppress any admission made by him."[140]

Similarly, Pennsylvania youth also begin in Family Court and may be transferred to criminal court pursuant to a hearing.[141] However, Pennsylvania is much more expansive in its statute regarding factors to analyze for transfer purposes.[142] Some of the factors Pennsylvania courts consider are (1) whether a prima facie case against the youth exists; (2) whether the "act would be considered a felony if committed by an adult;" (3) impact of the offense on the victim and community; (4) threat to public safety; (5) nature and circumstances of the alleged offense; (6) mental capacity and maturity; and (7) adequacy of dispositional alternatives.[143] The statute also lists certain acts that, if committed by an adult, would constitute a crime, and thus are ineligible for transfer: kidnapping, voluntary manslaughter, rape, and aggravated assault.[144]

Both states' approaches are practicable and exhibit two effective models for the New York Legislature. Having a statute that both lists factors to examine and specific crimes to identify—either to automatically transfer to Family Court or automatically remain in the Youth Part—is essential to the success of New York's RTA. The Legislature should amend the RTA to include all of the factors mentioned above for a determination based on a totality of the circumstances. Further, it must identify some automatic offenses, like those listed in the Connecticut and Pennsylvania statutes, to allow for a bright-line rule of transfer or retainment.

Moreover, both statutes arguably offer a solution to the concerns associated with the undefined concept of extraordinary circumstances. The problems that may be associated with determining culpability upon a motion for extraordinary circumstances in New York are virtually non-existent in a state where a hearing is held. First, youth have the ability to put on an effective defense through the opportunity to diminish culpability. Further, by establishing certain discretionary factors to consider, the courts are given appropriate guidance for a

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[140] *Id.*

[141] 42 PA. STAT. AND CONS. STAT. ANN. § 6355(a) (West 2020) (Transfer to criminal proceedings).

[142] *Id.* § 6355(a)(4).

[143] *Id.*

[144] *Id.* § 6355(g)(2).

balancing or totality of the circumstances test. In essence, it diminishes the likelihood that courts will resort to examining factors that are inappropriate—such as prior history—or picking and choosing one factor—such as mental illness—that outweighs all the rest.

B. Use of Blended Sentencing Laws

Lastly, the New York Legislature should incorporate a blended sentencing model into the RTA. Generally, there are five blended sentencing laws that have been used in various states throughout the country.[145] Scholars note that "under this expanded sentencing authority, . . . judge[s] can step away from the 'all-or-nothing' mentality of choosing one system over the other and use both the juvenile system and the adult criminal system to satisfy the desired goals."[146] Because youth charged with felonies begin in the criminal justice system, the two options available under blended sentencing laws are criminal-exclusive blend or criminal-inclusive blend.[147] The criminal-exclusive model, which allows criminal courts to impose *either* a juvenile justice disposition or a criminal sentence,[148] may serve as the solution to having to conduct a preliminary determination of the existence of one of the three statutory factors under the RTA when youth are charged with a violent felony.

For example, under the RTA, if the DA's information alleges significant physical injury, display of a weapon, or a sex offense, the case should automatically be retained in the Youth Part of the criminal justice system.[149] This eliminates the preliminary assessment of culpability to determine which court system the case belongs in. Nonetheless, youth should have the opportunity to have a hearing to present defenses to culpability at the next

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[145] Brandi Miles Moore, *Blended Sentencing for Juveniles*, 22 J. JUV. L. 126, 131 (2001) (listing juvenile-exclusive blend, juvenile-inclusive blend, juvenile-contagious blend, criminal-exclusive blend, and criminal-inclusive blend).

[146] *Id.* at 130–32.

[147] *Id.* at 131. In the first three options, the juvenile justice system retains jurisdiction, while the last two options give the criminal justice system jurisdiction. *Id.*

[148] PATRICIA TORBET, ET AL., OFF. OF JUV. JUST. AND DELINQ. PREVENTION, STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME 12 (1996), http://www.ncjj.org/pdf/statresp.pdf [https://perma.cc/E2QE-Z6BU].

[149] Presumably, there should not be concerns regarding false allegations because (1) supporting depositions must be signed under a penalty of perjury; and (2) prosecutors and others charged with carrying out the laws of the state must abide by a code of ethics that would prohibit such misconduct.

stage of the case. Youth may present defenses including: (1) there was no significant injury, or they were not the cause of such injury; (2) there was no weapon displayed during the commission of the crime; or (3) the sex offense alleged involves the unreliability of uncorroborated, conflicting testimony. At the close of the evidence, the judge would decide whether such factors are present by a preponderance of the evidence. If one or more are present, and the case is proven beyond a reasonable doubt at the trial stage, the presence of the statutory factor would act as an aggravating factor, allowing the criminal court to impose a criminal sanction. However, if none are present, and the case is proven beyond a reasonable doubt, the absence of any statutory factor would act as a mitigating factor, allowing the court to impose a juvenile disposition.[150]

This proposed approach satisfies the RTA's intent to assess culpability—based on injury, weapon, and sex offense—while at the same time reserving the decision in the Youth Part for the judge who will retain jurisdiction throughout the life of the case. Further, the blended sentencing would make up for the inability to assess the case for transfer to Family Court under this new framework. In other words, if the factors are present, the case is where it would have been if determined earlier and the youth would have received a criminal sanction; if the factors are not present, the case would have been transferred to Family Court and the youth would have received a juvenile disposition. Therefore, not only is this approach fair and equitable, it imposes a stronger incentive for youth not to commit sex offenses, crimes with weapons, or crimes of violence. Lastly, this unique approach eliminates the discretion granted to DAs to transfer the cases regardless of a finding one or more of these factors and eliminates the extraordinary circumstances determination from courts altogether as it pertains to violent felonies.

C. New Approach to Assessing Mental Illness Among Youth

Currently, to assess mental illness in youth, New York State utilizes the Youth Assessment and Screening Instrument ("YASI")—a juvenile probationary tool implemented in 2001.[151]

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[150] Criminal court judges may benefit from training on the imposition of juvenile dispositions, and vice versa.

[151] ORBIS PARTNERS INC., LONG-TERM VALIDATION OF THE YOUTH ASSESSMENT AND SCREENING INSTRUMENT (YASI) IN NEW YORK STATE JUVENILE PROBATION 1-1

The goals of the YASI are "public safety, youth accountability, and competency."[152] However, it is unclear whether the state uses the YASI—or indeed, any of the common mental health screening tools—during a youth's initial contact with the system.[153] Therefore, it is understandable that youth in the juvenile justice system are not provided with adequate treatment; there is no standardized assessment and thus, no way to determine what treatments are necessary.[154] In accordance with New York's attitude toward reformation and rehabilitation, an effective screening tool must be implemented in both the juvenile justice system and the Youth Part. If extraordinary circumstances are appropriately determined and the youth is either transferred to Family Court—*or* retained in the Youth Part—both systems would be equipped to assess mental illness and provide effective treatment options.

The most common mental health assessment tool is the Massachusetts Youth Screen Instrument ("MAYSI").[155] The MAYSI focuses on behaviors and feelings that are often associated with mental illness, rather than formal diagnostics.[156] Youth are presented with fifty-two true-false statements across nine scales, including alcohol/drug use, anger, anxiety, depressed mood, fighting, somatic complaints, suicide ideation, thought disturbance, and traumatic experiences.[157] The score outcomes are then matched up with "clinically significant levels."[158] For example, if a youth reaches the cut-off score, he or she is presumed to have specific mental health needs; or if a youth scores above a level of "caution" or "warning," intervention

(2007), https://www.criminaljustice.ny.gov/opca/pdfs/YASI-Long-Term-Validation-Report.pdf [https://perma.cc/JF38-ZRF9].

[152] *Technology Advancing Practices*, N.Y. DIV. OF CRIM. JUST. SERVS., https://stage.criminaljustice.ny.gov/opca/technology.htm [https://perma.cc/H82Q-JXY9] (last visited Feb. 28, 2021).

[153] ANDREW WACHTER, JUV. JUST. GEOGRAPHY, POL'Y, PRAC. & STAT., MENTAL HEALTH SCREENING IN JUVENILE JUSTICE SERVICES 2 (2015), http://nysap.us/JJGPS%20StateScan%20Mental%20Health%20Screening%20in%20Juvenile%20Justice%202015_4.pdf [https://perma.cc/CP4M-Q3EB].

[154] NAT'L CTR. FOR MENTAL HEALTH AND JUV. JUST., MENTAL HEALTH SCREENING IN JUVENILE JUSTICE SETTINGS 2 (2016), http://adq631j7v3x1shge52cot6m1-wpengine.netdna-ssl.com/wp-content/uploads/2018/02/Mental-Health-Screening-in-Juvenile-Justice-Settings-for-WEBSITE.pdf [https://perma.cc/BE9A-3DDK].

[155] WACHTER, *supra* note 153, at 3.

[156] Thomas Grisso, *Juvenile Offenders and Mental Illness*, 6 PSYCHIATRY, PSYCH. & L. 143, 148 (1999).

[157] *Id.*

[158] *Id.*

should be considered.[159] The advantages of the MAYSI are that the instrument can "identify every youth's mental status within 24 hours after entering detention centers, [takes] no more than 10 minutes to administer, and require[s] no clinical expertise."[160]

Once mental illness is preliminarily evaluated, more in-depth assessments can be conducted by experienced psychologists[161] for the purposes of "problem identification, diagnosis, and treatment planning for youth."[162] Both the Minnesota Multiphasic Personality Inventory-Adolescent ("MMPI-A) and the Million Adolescent Clinical Inventory ("MACI") are commonly utilized for these purposes.[163] For example, the MMPI-A measures childhood psychopathology of youth and provides information on symptomatic behavior and diagnostic treatment considerations.[164] The MACI, on the other hand, measures "early signs of Axis I and Axis II disorders" and provides information on substance abuse proneness, suicidal tendency, and eating dysfunctions.[165] A combination of all three assessments will not only put New York on a progressive path toward identifying mental illness among youth, but it will also provide youth with better access to mental health services, regardless of the court system in which they are placed.

CONCLUSION

While the RTA was successfully passed in New York, there is still much work to be done to improve and ensure continued success. Unfortunately, given the poorly crafted legislation, the courts and district attorneys are essentially free to ignore the law. If the RTA is not amended, or the system fails to correct

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[159] *Id.*

[160] *Id.* The accuracy of the self-reports is later confirmed by clinical psychologists. *Id.*

[161] *Id.*

[162] *Minnesota Multiphasic Personality Inventory-Adolescent*, PEARSON, https://www.pearsonassessments.com/store/usassessments/en/Store/Professional-Assessments/Personality-%26-Biopsychosocial/Minnesota-Multiphasic-Personality-Inventory-Adolescent/p/100000465.html [https://perma.cc/382D-24V2] (last visited Feb. 28, 2021, 8:01PM).

[163] Grisso, *supra* note 156, at 148.

[164] *Minnesota Multiphasic Personality Inventory-Adolescent*, *supra* note 162.

[165] *Millon Adolescent Clinical Inventory*, PEARSON, https://www.pearsonassessments.com/store/usassessments/en/Store/Professional-Assessments/Personality-%26-Biopsychosocial/Millon-Adolescent-Clinical-Inventory-/p/100000667.html?tab=product-details [https://perma.cc/N3FX-L2KL] (last visited Mar. 4, 2021).

these recurring problems, the legislation may ultimately fail. If this legislation fails, not only will there be an absence of real juvenile justice reform, but there is also a profound risk that youth will continue to feel the effects of the old system that New York so desperately tried to abolish. Incorporating appropriate factors to examine and specifying crimes to consider under the "extraordinary circumstances" analysis, reorganizing the way courts assess culpability, and repairing the mental health system for youth are three essential avenues for change. As the saying goes, it's back to the drawing board, New York.