

FACTS AND MYTHS ABOUT FAMILY COURT AND RAISE THE AGE IN NEW YORK

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In 2017, New York enacted the Raise the Age (RTA) Law, which recognizes that 16- and 17-year-olds should not automatically be tried as adults, bringing New York State in line with 48 other states across the country. Opponents to New York's criminal legal reforms, which also includes bail and discovery, are using recent headlines to falsely blame these long-overdue changes for a recent increase in gun violence in New York. Among the misinformation being shared about these important reforms is the perception that Family Courts are not adequately equipped to address the needs of the youth brought before them.

In the face of these proposed criminal justice reform rollbacks, Brooklyn Defender Services is seeking to share the objective facts around issues like Raise the Age and Family Court with policy makers and ensure that myths and misinformation are dispelled.

The objective truth is that Family Court offers more effective, root-cause interventions for adolescents. Family Court interventions are statutorily designed for rehabilitation, so that the young person can either stay at home and in school or return to the community in the safest way possible. Family Court is often better equipped at dealing with the unique issues and challenges that face youth, with age-appropriate interventions and services that are tailored for the brain development of an adolescent child.

THE FACTS ABOUT FAMILY COURT INTERVENTIONS IN NYC UNDER RAISE THE AGE:

Pre-trial interventions: In New York City's Family Courts, youth can be detained or released to the community with conditions pending the trial or resolution in their court case. The conditions of a release to the community can include compliance with a court ordered Alternative to Detention (ATD) program. ATD programs offer youth risk and need assessments to determine what programming would best help the young person remain at home and in school. Within these programs, youth have access to substance abuse treatment, individual and group counseling, case management, and housing, family support, education, and employment services. These programs also provide close monitoring of curfew and school attendance.

Alternatively, youth may be remanded to either secure or non-secure detention pending the outcome of their court case. Both settings are locked facilities where youth are under close supervision, monitoring and restrictions, including the requirement to attend school and engage in programming.

Whether mandated to a court ordered ATD or detention, the court receives frequent program updates and can change a young person's release status at any time.

Disposition (sentencing) interventions: If a youth is found guilty, there are many dispositional interventions available in New York City’s Family Courts. These include placement out of the home in a secure facility, probation for up to two years with different levels of programming and supervision in the community, conditional discharge with court orders to follow for one year, and an adjournment in contemplation of dismissal (ACD), with the case being sealed and dismissed at the end of the 6-month adjournment. If a young person is sentenced to a probationary period, there are four levels of supervision that can be ordered by a Family Court judge. The highest level of probation includes enrollment in an Alternative to Placement (ATP) program, a therapeutic program which offers counseling in the home with family participation, or in the community where the youth is partnered with a mentor and offered other group-based counseling services. Depending on how the youth responds to the interventions, their time in placement or probation can be extended yearly, by a court order. The most serious cases in Family Court are called “designated felonies.” Upon a finding of guilt on a designated felony, placement (incarceration in a juvenile detention facility) can be for up to five years. For other felonies, youth can be placed out of their home for up to 18 months and for misdemeanors up to 12 months. Probation on any charge can be up to two years.

COMMON MYTHS ABOUT FAMILY COURT:

1. *A teenager carrying a gun will go straight to Family Court and get off with a slap on the wrist.*

Sixteen and seventeen-year-olds arrested for felonies always start in Supreme Court under Raise the Age. Based on the specific facts of the case the Supreme Court maintains jurisdiction or sends the case to Family Court. Even where the statute allows for a transfer to Family Court, the prosecutor may seek a separate hearing to retain the case in Supreme Court. Upon removal to Family Court, the Supreme Court judge determines whether to release or remand the youth to a secure facility. There is no bail option in Family Court. Whether detained or released, the first step in the process is for the department of probation to determine if the case can be diverted from court by providing programming and supervision to the youth (“diversion”) or whether the case requires court intervention. Diversion is not an option on the more serious charges, and the case is referred to the prosecuting agency in Family Court.

2. *Increased gun violence is linked to RTA.*

Following months of lockdowns, death, and uncertainty due to the pandemic, New York, as well as many other cities across the country where criminal justice reforms were not enacted, saw an increase in gun violence. However, the rate of arrests for gun violence for 16- and 17-year-olds was still far lower than in 2016 when these youth were charged as adults for all crimes.

HOW CAN NEW YORK STRENGTHEN OUTCOMES UNDER RAISE THE AGE?

Delays and interruptions caused by the pandemic have contributed to the lack of available community-based programming for youth across New York State. There are millions of dollars for youth available throughout the state, however it is difficult for the programs on the ground to access the money, which is often held up by probation departments and other local government entities.