



**BROOKLYN
DEFENDER
SERVICES**

MEMORANDUM OF SUPPORT

Raise the Age of Youthful Offender Status

A.4743B (O'Donnell)

June 1, 2018

Brooklyn Defender Services (BDS) strongly supports A.4743B, a bill to raise the age of youthful offender status. BDS provides multi-disciplinary and client-centered criminal defense, family defense, immigration and other civil legal services, social work support and tools for self-advocacy to more than 30,000 indigent Brooklyn residents every year. Over the past 22 years we have represented close to half a million people in criminal matters in Kings County, New York. Our Brooklyn Adolescent Representation Team is a specialized unit made up of dedicated attorneys and social workers that represent over two thousand adolescents ages 13-24 annually.

Raising the age of YO is the most significant step that the legislature can take to reduce the impact of mass incarceration policies on young people in their early twenties. The bill has the potential to protect thousands of young adults from the collateral consequences of a criminal conviction for first-time, low-level offenses or where a judge determines that a YO adjudication is the just outcome in that case.

I. CURRENT LAW

New York's Youthful Offender ("YO") law (Criminal Procedure Law § 720) provides the opportunity for any youth under the age of 19 to have a criminal conviction substituted with a non-criminal adjudication at sentencing. The YO law, which gives judges' discretion to grant YO in more serious cases and is mandatory for first-time, low-level offenses, allows for reduced prison sentences and automatic sealing.

The current law has been an overwhelming success in protecting young people from adult criminal conviction. Youthful Offender status is currently used extensively in cases of 16- and 17-year-olds – converting 75 percent of criminal convictions to Youthful Offender adjudications.¹

II. PROPOSED LEGISLATION

A.4743B (O'Donnell) would raise the age of Youthful Offender status to age 22, allowing young adults ages 19-21 to access the sealing protections and broader judicial discretion to customize the appropriate result for a young person.

The bill allows judges to consider granting YO to youth who have previously received YO for a felony charge or a juvenile delinquency designated felony adjudication. This is particularly critical to prevent upstate mandatory minimum sentences where such sentences would not be beneficial to youth or their communities, such as in cases where the young person is successfully progressing in an alternative-to-incarceration, mental health or substance abuse treatment program.

The bill would shield the name and charges of a young people accused of YO-eligible crimes (except felony sex offenses) from the public unless and until the time of conviction. Under the current YO law, 16-18 year-olds charged with violations or misdemeanors who are eligible for YO have their cases sealed to the public from the beginning of the case. This amendment would ensure that accusatory instruments in felony cases would also remain sealed unless and until a conviction occurs.

Finally, the bill creates a statutory presumption that judges grant YO in eligible cases unless the District Attorney can show that the interests of justice require otherwise.

III. JUSTIFICATION

This bill reflects modern neuroscience research that indicates that a young person's brain does not fully develop until their mid-twenties.² The Youthful Offender age limit should be raised to protect young people ages 19-21 from many of the worst harms of criminalization while they age out of the impairment in judgment associated with their youth.

Young people are a particularly vulnerable population in jail and prison settings. Many of these YO findings prevent mandatory upstate prison time and have a significant impact on the number of young people in prison. The YO statute allows judges to use alternatives, including mental health and drug treatments, as well as proven youth-

¹ *Final Report of the Governor's Commission on Youth, Public Safety: Recommendations for Juvenile Justice Reform in New York State* (2015), pp. 134-135, available at [http://www.nijn.org/uploads/digital-library/ReportofCommissiononYouthPublicSafetyandJustice_0%20\(1\).pdf](http://www.nijn.org/uploads/digital-library/ReportofCommissiononYouthPublicSafetyandJustice_0%20(1).pdf).

² See, e.g., Lucy Wallis, *Is 25 the new cut-off point for adulthood?*, BBC News, Sept. 23, 2013, available at <http://www.bbc.com/news/magazine-24173194>.

focused programs and the resources of the Department of Probation to help place young people on a better course. The fact that the record is immediately sealed improves the young person's opportunities for employment, education and housing and provides critical protection from deportation.

IV. CONCLUSION

Raising the age of YO is a critical reform to give judges discretion to limit the harms of criminal records and incarceration for young people. We strongly urge the legislature to pass and the Governor to sign this legislation into law this session.

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