



**TO:** P-12 Education Committee

**FROM:** Elizabeth R. Berlin

**SUBJECT:** Update on the Implementation of New York State's 2017 Law Raising the Age of Criminal Responsibility

**DATE:** October 24, 2019

**AUTHORIZATION(S):** *Elizabeth R. Berlin*

## **SUMMARY**

### **Issue for Discussion**

The purpose of this presentation is to provide an update to the P-12 Education Committee regarding implementation of the new law which raised the age of criminal responsibility in New York State (NYS) and its impact on the education of students involved in the juvenile and adult criminal justice systems.

### **Reason(s) for Consideration**

For Information.

### **Background Information**

On April 10, 2017, the Raise the Age (RtA) legislation was enacted (Part WWW of Chapter 59 of the Laws of 2017). Implementation of this law has been phased in over a two-year period. Beginning on October 1, 2018, the new provisions took effect for offenses committed by 16-year olds, and on October 1, 2019, the new provisions took effect for offenses committed by 17-year olds.

Over the past two years, the New York State Education Department (NYSED) has partnered with the New York State Office of Children and Family Services (OCFS), and the New York State Division of Criminal Justice Services (DCJS) to support the educational needs of students involved in the juvenile and criminal justice systems in NYS.

The RtA law reorganized the juvenile and criminal justice systems to prohibit the prosecution of young people under the age of 18 as adults, in most instances. NYS was the 49<sup>th</sup> state to raise the age of criminal prosecution.

The overarching goal of the realignment of the juvenile and adult criminal justice systems is to permit more youth to have access to the rehabilitative approach of addressing young offenders under the NYS Family Court Act. This process includes mandatory adjustment or diversion of alleged crimes, alternatives to detention, placement in the least restrictive environment, and confidentiality of the young offender's name and any criminal record. Research has shown that during adolescence, brain development goes through its final stages in certain areas which affect thinking, behavior and potential for learning and rehabilitation. The rehabilitative approach through the Family Court process recognizes the emerging brain research that demonstrates that the brains of young people do not reach full maturity until they are in their mid-twenties.<sup>1</sup>

Under the RtA law in NYS, there are now three types of offender categories: juvenile delinquents, juvenile offenders, and a new category created by the RtA law -- adolescent offender.

Under the RtA law, the previously existing juvenile delinquency (JD) provisions of the Family Court Act continue for a young person under the age of 16 who is alleged to have committed a non-juvenile offender felony or a misdemeanor. When RtA is fully implemented, a JD will also include alleged misdemeanors, non-violent felonies, or a violent felony that has been "removed" to Family Court from a new section of the Criminal Court called Youth Part. For a young person adjudicated to a JD, the provisions of Article 3 of the Family Court Act regarding adjustment, probation, and placement will apply, which have not changed as a result of the RtA law.

A juvenile offender (JO) is defined as a young person between the ages of 13 to 15, who is alleged to have committed one of specifically enumerated serious offenses, such as murder, manslaughter, rape, and robbery. The young person will be prosecuted in the Youth Part of the Criminal Court. Current adult sentencing will apply to these youth, if convicted. The provisions regarding JOs are not new.

An adolescent offender (AO) is defined as a 16- or 17-year old who is alleged to have committed a felony. The young person will be prosecuted in the Youth Part of the Criminal Court. Adult sentencing will apply to these youth, if convicted.

Prehearing detention in existing non-secure and secure detention facilities licensed by OCFS remains the same for JOs and JDs. AOs will be detained pre-trial in new "specialized secure detention facilities for older youth" or an OCFS secure facility, at the discretion of the presiding judge. Historically, non-secure and secure detention placements have been limited to predominantly pre-trial confinement of youth the court has determined to be a flight risk or at risk to commit another crime if kept in the community and could vary in length of stay from less than 24 hours to many months for youth awaiting trial for a serious offense. However, as explained below, the new specialized secure detention will also be used post-sentencing for AOs.

---

<sup>1</sup> Steinberg, L. (2009) *Adolescent Development and Juvenile Justice*, Annual Review of Clinical Psychology.  
[https://pdfs.semanticscholar.org/dc04/89039ea816b4814d1166b7075804213ff3e9.pdf?\\_ga=2.98122079.1575063830.1552675145-1145014435.1552675145](https://pdfs.semanticscholar.org/dc04/89039ea816b4814d1166b7075804213ff3e9.pdf?_ga=2.98122079.1575063830.1552675145-1145014435.1552675145)

Post-sentencing confinement options for AOs include either specialized secure detention facilities for older youth operated by Department of Corrections and Community Supervision (DOCCS) or an OCFS secure facility, at the discretion of the presiding judge. If a youth under the age of 18 is sentenced for one year or more, they would be placed in the new DOCCS AO facility, and if the youth is 18 or older at the time of sentencing with a sentence of one year or more, the youth would be placed in existing DOCCS adult facilities.

Post-sentencing confinement options for JOs is limited to OCFS secure facilities. Post-sentencing confinement for JDs includes existing OCFS limited secure or non-secure facilities, or “residential foster care agencies,” also known as “voluntary agencies” which may be affiliated with a Special Act School District or Approved Private Article 81 School (which may also be known as a Chapter 853 school). For the RtA youth, OCFS has contracted with 13 voluntary agencies to provide specialized programming for these older youth, three of which are affiliated with a Special Act School District and six of which are affiliated with an Approved Private Article 81 School.

OCFS had projected that the average daily use of non-secure and secure detention facilities would more than double, based upon estimates of similarly aged youth historically kept in county jails. Additionally, the new population of youth kept in the specialized secure detention facility is estimated to range from 340 – 420 average daily population statewide by full implementation in 2020. Recently, the NYS Raise the Age Implementation Task Force, upon which the Interim Commissioner of Education serves, issued its first annual report which demonstrates that six months into the first year of implementation, the numbers are considerably lower than expected.<sup>2</sup>

In support of implementation of the historic RtA law, the Department seeks to assist in providing improved educational opportunities for these youth. The intent of the RtA law to provide 16- and 17-year old youth involved with the justice system access to the rehabilitative services available in the juvenile justice system, must include developmentally-appropriate educational services and opportunities to help these young people turn their lives around and get on a path headed for success.

Research has documented that many of the adolescents who commit crimes and enter the juvenile justice system are significantly over age and under credited; some reading only at the elementary level.<sup>3</sup> A recent study indicated that one-third of incarcerated youth needed or received special education services, a rate nearly four times higher than non-incarcerated youth.<sup>4</sup> Many are already disengaged from school, having been suspended or expelled, dropped out or been chronically absent.<sup>5</sup>

---

<sup>2</sup> [https://www.ny.gov/sites/ny.gov/files/atoms/files/NYS\\_RT\\_A\\_Task\\_Force\\_First\\_Report.pdf](https://www.ny.gov/sites/ny.gov/files/atoms/files/NYS_RT_A_Task_Force_First_Report.pdf)

<sup>3</sup> National Juvenile Justice Network. (2016) *Improving Educational Opportunities for Youth in the Juvenile Justice System*. [http://www.njjn.org/uploads/digital-library/NJJN\\_Educational%20Re-entry-snapshot\\_Mar2016\\_FINAL.pdf](http://www.njjn.org/uploads/digital-library/NJJN_Educational%20Re-entry-snapshot_Mar2016_FINAL.pdf)

<sup>4</sup> Leone and Weinberg. (2012) *Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems*. (<https://stuartfoundation.org/addressing-unmet-educational-needs-children-youth-juvenile-justice-child-welfare-systems/>)

<sup>5</sup> National Juvenile Justice Network. (2016) *Improving Educational Opportunities for Youth in the Juvenile Justice System*. [http://www.njjn.org/uploads/digital-library/NJJN\\_Educational%20Re-entry-](http://www.njjn.org/uploads/digital-library/NJJN_Educational%20Re-entry-)

It is well settled that engaging youth in their education and future is key to reducing recidivism.<sup>6</sup> A 2003 study by the New York State Department of Correctional Services (now DOCCS) of attainment of a High School Equivalency Diploma (GED) and recidivism demonstrated that incarcerated persons who earned a GED while incarcerated returned to custody within three years at a significantly lower rate than those who did not earn a GED while incarcerated. The reduced rates of recidivism were especially striking with youth under the age of 21.<sup>7</sup>

When youth must be confined, detention and placement settings provide an opportunity to re-engage youth in their education and their future, and to reset their trajectory. To do this, settings need the ability to quickly access student records and perform educational assessments, as well as the flexibility to design individualized developmentally-appropriate education plans that may include, for example, credit recovery, special education services, career and technical education, access to career exploration, bilingual education, English as a new language services, literacy programs, work-based learning experiences, life-skill development, and counseling.

The educational programs must also plan for and support youth reentry to the community, including ensuring credit for work accomplished while in confinement and re-enrollment in school and in the community. Students may not receive adequate transitional support upon their release, which can lead students to drop out or have an unsuccessful transition. Education records are difficult for the education programs in the justice system facilities to obtain. In many cases, students are not receiving credit for work completed while confined upon return to their home school district.

Our NYS approved Every Student Succeeds Act (ESSA) Plan and the recently adopted implementing regulations outline steps intended to improve these transitions – including creating a multidisciplinary State Transition Liaison Advisory Group and requiring every school district to appoint a transition liaison. The Advisory Group is charged with assisting NYSED in providing guidance for school districts and transition liaisons to ensure that each student receives the appropriate support, services and opportunities they need in order to be successful. Among the deliverables are a universal transition plan as well as training and guidance to support the transition liaisons.

Another factor that makes educational programming difficult in these settings is the rolling admissions and discharges to and from the program, amplifying the need to develop

---

[snapshot\\_Mar2016\\_FINAL.pdf](#), The Council of State Governments Justice Center. (2015) *Locked Out: Improving Educational and Vocational Outcomes for Incarcerated Youth* Center. [https://csgjusticecenter.org/wp-content/uploads/2015/11/LOCKED\\_OUT\\_Improving\\_Educational\\_and\\_Vocational\\_Outcomes\\_for\\_Incarcerated\\_Youth.pdf](https://csgjusticecenter.org/wp-content/uploads/2015/11/LOCKED_OUT_Improving_Educational_and_Vocational_Outcomes_for_Incarcerated_Youth.pdf).

<sup>6</sup> Id., Read, N. W. & O’Cummings, M. (2011). *Factsheet: Juvenile Justice Education*. Washington, DC: National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent, or At Risk (NDTAC). Online at [http://www.neglected-delinquent.org/nd/docs/factSheet\\_education.pdf](http://www.neglected-delinquent.org/nd/docs/factSheet_education.pdf).

<sup>7</sup> J. Nuttall. (2003) *The effect of Earning a GED on Recidivism Rates*. [https://www.passged.com/media/pdf/research/The\\_Effect\\_of\\_Earning\\_a\\_GED\\_on\\_Recidivism\\_Rates.pdf](https://www.passged.com/media/pdf/research/The_Effect_of_Earning_a_GED_on_Recidivism_Rates.pdf).

individualized academic programs for each youth. Additionally, all programs, including detention, are expected to provide special education programming and related services identified on a young person's individualized education program (IEP).

In a 2016 presentation to the Board of Regents, OCFS reported that 68% of youth in OCFS-operated facilities were identified as needing treatment for substance use disorders; 49% needing mental health services; and 46% needing special education services. Other factors that contribute to the challenges in providing programs and services for RtA youth may include, especially in smaller facilities, difficulty having instruction in core subjects provided by appropriately certified staff, and insufficient professional development to fully prepare staff to address the unique needs of the student population. Facilities often do not have up-to-date equipment and/or access to educational technology. Access to enrichment activities and career and technical education is often limited as well.

The Department has hosted or participated in numerous meetings with leaders and staff from OCFS, DOCCS, the RtA voluntary agencies, and non-secure and secure detention facilities to both answer questions and learn more about the providers' concerns regarding their ability to provide the robust educational programming needed to engage these youth and to provide opportunities that lead them toward a path of success.

The 2018-19 enacted budget included a \$100 million aid to localities miscellaneous appropriation "for services and expenses related to raising the age of juvenile jurisdiction." The appropriation language authorizes funds to be transferred or suballocated "to any aid to localities appropriation of any state department, agency, or the judiciary and any state department, agency or the judiciary may then transfer all or a portion of such suballocation to state operations to accomplish the intent" of the appropriation. \$100 million was made available for RtA implementation in the 2018-19 enacted budget, with another \$200 million appropriated for this purpose in the 2019-20 enacted budget. In discussions with the Division of the Budget, NYSED was informed that these funds were intended to support the statewide needs of implementing the Raise the Age legislation which would include educational programs and services.

As part of annual tuition rate-setting methodology, the Department advanced a recommendation for additional "Hold Harmless" funding for the Approved Private Article 81 Schools and the Special Act School Districts which expanded their educational programming in response to Raise the Age. Under the current reimbursement methodology, opening new classrooms or reserving classroom seats in response to the residential capacity approved for Raise the Age is a financial risk for the schools because if enrollment targets are not fully achieved, the schools will not receive funding to cover their expenses. For the first three years, OCFS reimbursement pays for all of the approved residential beds, regardless of whether children are placed or not. The Department recommended that the hold harmless granted to OCFS be extended to the tuition rates to ensure consistency across both the residential and educational components and to allow educational programming to meet the objectives of the Raise the Age initiative.

While the particular methodology using OCFS approved capacity was not adopted, the Division of the Budget did approve a tuition rate "Hold Harmless" component to ensure

that the schools are reimbursed for additional expenses incurred and for underutilized capacity. This additional funding is intended to ensure that schools are made whole for lost revenue and for unreimbursed expenses attributed to Raise the Age for new school personnel to meet students' needs and for minor facility improvements. The Department is currently working with OCFS, the Division of the Budget, and the impacted schools to collect required fiscal information to support the additional "Hold Harmless" funding and to develop a process for state reimbursement of tuition rates.

### **Related Regents Items**

The October 2018 Full Board Regents meeting included a presentation by [DCJS on the Juvenile Justice System: Trends by Race – Ethnicity](#)

<http://www.regents.nysed.gov/common/regents/files/FB%20Monday%20-%20Race%20Ethnicity%20Presentation%20-%20Regents.pdf>

At the March 2018 Regents Meeting, [amendment to §100.5\(b\) of the Commissioner's Regulations Relating to the Laboratory Experiences Required in Order to Take a Science Regents Examination for Students in State Agency Educational Programs and Correctional Facilities](#) was adopted.

<https://www.regents.nysed.gov/common/regents/files/318p12a1.pdf>

The January 2016 Regents P-12 Education Committee included a presentation regarding Educational Programs for Incarcerated and Detained Youth. [Educational Programs for Incarcerated and Detained Youth.](#)

<http://www.regents.nysed.gov/common/regents/files/P-2%20Incarcerated%20Youth.pdf>

### **Next Steps**

- 1) The Department will continue to work with OCFS, DCJS, DOCCS, detention providers and the voluntary agencies to implement the RtA law, taking into consideration the various educational settings that need to be either enhanced or created to serve the educational needs of youth being placed in the varied settings under RtA.
- 2) The Department will continue to work with the Transition Liaison Advisory Group to further define the role of transition liaisons required under ESSA to be appointed by each school district and to finalize universal forms, appropriate guidance, and training to enhance the education provided for system-involved youth while in residential facilities.
- 3) The Department will pursue legislative changes to institute a juvenile justice exception to expedite the transfer of records regarding a student who is detained, placed or incarcerated from a school district the student last attended and between programs, as well as when the student returns to the student's home school district and to require school districts of location where juvenile or criminal justice facilities are located to review the academic record of a student who has completed the graduation requirements while a resident of the facility and, where appropriate, issue a high school diploma.
- 4) The Department will implement a "Hold Harmless" funding methodology as approved by the Division of the Budget in collaboration with OCFS and impacted Special Act School Districts and Approved Private Article 81 Schools.