

**Court of Appeals**  
*of the*  
**State of New York**

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THE PEOPLE OF THE STATE OF NEW YORK,

– against –

*Respondent,*

ERRICK GUERRERO,

*Defendant-Appellant.*

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**MOTION FOR LEAVE TO FILE BRIEF OF JUVENILE  
JUSTICE *AMICI CURIAE* IN SUPPORT OF DEFENDANT-  
APPELLANT ERRICK GUERRERO**

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October 1, 2025



**COURT OF APPEALS OF  
THE STATE OF NEW YORK**

THE PEOPLE OF THE STATE OF NEW  
YORK,

Respondent,

—*against*—

ERRICK GUERRERO,

Defendant-Appellant.

APL-2025-00069

Appellate Division,  
Fourth Department  
Docket No.: 2022-01437

Onondaga County Indictment  
Number 2021-0120-1234

**NOTICE OF MOTION FOR LEAVE TO FILE  
BRIEF AS *AMICI CURIAE* IN SUPPORT OF  
DEFENDANT-APPELLANT**

PLEASE TAKE NOTICE that upon the accompanying Affirmation of William C. Silverman, dated October 1, 2025, and upon the proposed Brief of *Amici Curiae* The Bronx Defenders, Brooklyn Defender Services, CASES, Center for Appellate Litigation, Center for Community Alternatives, Chief Defenders Association of New York, Children’s Defense Fund, Drive Change, The Fortune Society, The Gault Center, Human Rights for Kids, Juvenile Law Center, Kings Against Violence Initiative, Legal Action Center, The Legal Aid Society, Neighborhood Defender Service of Harlem, New York County Defender Services, New York State Association of Criminal Defense Lawyers, New York State Defenders Association, The Osborne Association, The Sentencing Project,

Unchained, United Neighborhood Houses, Westchester Children's Association, Youth Justice Network, and Youth Represent (collectively, the "Juvenile Justice Amici"), and upon all of the pleadings and papers heretofore filed herein, the Juvenile Justice Amici will move this Court on October 14, 2025, for an Order under Rule 500.23(a) granting the Juvenile Justice Amici's Motion for Leave to File a Brief as *Amici Curiae* in support of Defendant-Appellant Errick Guerrero, and for such other relief as the Court may deem just and proper.

Dated: October 1, 2025  
New York, New York

Respectfully submitted,



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**COURT OF APPEALS OF  
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THE PEOPLE OF THE STATE OF NEW  
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ERRICK GUERRERO,

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APL-2025-00069

Appellate Division,  
Fourth Department  
Docket No.: 2022-01437

Onondaga County Indictment  
Number 2021-0120-1234

**AFFIRMATION IN SUPPORT OF  
MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE***

William C. Silverman, an attorney duly admitted to practice law before the courts of the State of New York, affirms the following under penalties of perjury:

1. I am a partner at Proskauer Rose, LLP, attorneys for *amici curiae* The Bronx Defenders, Brooklyn Defender Services, CASES, Center for Appellate Litigation, Center for Community Alternatives, Chief Defenders Association of New York, Children's Defense Fund, Drive Change, The Fortune Society, The Gault Center, Human Rights for Kids, Juvenile Law Center, Kings Against Violence Initiative, Legal Action Center, The Legal Aid Society, Neighborhood Defender Service of Harlem, New York County Defender Services, New York State Association of Criminal Defense Lawyers, New York State Defenders Association,

The Osborne Association, The Sentencing Project, Unchained, United Neighborhood Houses, Westchester Children’s Association, Youth Justice Network, and Youth Represent (collectively, the “Juvenile Justice Amici”), and am a member of the bar of this Court. I submit this affirmation in support of the Juvenile Justice Amici’s motion for leave to file a brief *amici curiae* in support of Defendant-Appellant Errick Guerrero in the above-captioned appeal.

2. A copy of the Juvenile Justice Amici’s proposed *amici curiae* brief is attached hereto as **Exhibit A**.

3. Each of the Juvenile Justice Amici advances the interests of young New Yorkers who have encountered the criminal justice system, through some combination of advocacy, direct legal and social services, public education, or professional support. The organizations submitting this brief work with, and on behalf of, adolescents and young adults in a variety of settings and at every stage of the juvenile and criminal legal system. Amici’s advocacy for youth-based protections in the legal system rests on a deep understanding of the differences between adults and children and the power of age-appropriate interventions to transform young people’s lives and make communities safer.

4. Amici’s work is deeply impacted by legislation such as Raise the Age that seeks to lessen the harmful, systemic impacts of youth incarceration. Many amici were part of the original Raise the Age New York campaign or prior efforts to

raise the age of criminal responsibility in New York and other states. Many amici provide representation and programming to 16- and 17-year-olds in criminal and family courts and know from collective experience that as a general rule, family court is the appropriate venue in which adolescents should be held accountable for their actions.

5. The Juvenile Justice Amici thus have a compelling interest in ensuring statutory protections of youth in the criminal justice system are respected and upheld.

6. The Bronx Defenders (“BxD”) is a nonprofit provider of innovative, holistic, client-centered criminal defense, family defense, civil legal services, and social work support to indigent people in the Bronx. Each year, BxD defends over 25,000 low-income Bronx residents in criminal, civil, family, and immigration cases and reaches hundreds more through outreach programs and community legal education. In 2024, BxD represented approximately 180 new young clients under the age of 18 at arraignment. A significant number of their cases were retained in Bronx County Supreme Court, where they face lengthy prison sentences and permanent criminal records. BxD has witnessed firsthand the devastation prosecution in adult court brings to these young people, their families, and their communities. BxD has a vested interest in ensuring that young people accused of crimes have access to programs and services instead of facing incarceration and the

enduring stigma of a criminal record. More information about BxD is available at <https://www.bronxdefenders.org/>.

7. Brooklyn Defender Services (“BDS”) is one of the largest public defense offices in New York State, representing low-income people in criminal, family, civil, and immigration proceedings. BDS’s Adolescent Representation Team works to eliminate contact and involvement within the criminal legal system for court-involved youth aged 18 and under. Specialized attorneys, social workers, and youth advocates provide legal representation, advocacy, and social services in youth proceedings in Brooklyn’s criminal court, Supreme Court, and family court. They collaborate across BDS’s practices to provide comprehensive support to youth and their families navigating these complex and frightening legal systems. For over twenty-five years, BDS has worked, in and out of court, to protect and uphold civil rights and change laws and systems that perpetuate injustice and inequality. More information about Brooklyn Defender Services is available at <https://bds.org/home>.

8. CASES strives to give young people a real chance to succeed in the community, through a range of programming including alternatives to incarceration and detention that prevent incarceration and recidivism. CASES helps people pursue personal and professional growth, such as earning a GED, preparing for employment, and exploring new experiences and interests. CASES leverages the power of mentorship to support youth, family members and caregivers, helping



young people strengthen their interpersonal relationships and successfully navigate life's challenges. More information about CASES is available at <https://www.cases.org/>.

9. Center for Appellate Litigation (“CAL”) is a New York not-for-profit law firm that represents people convicted of crimes in the Appellate Division, First Department on their appeals and in other post-conviction proceedings. CAL’s clients are among society’s most disenfranchised: isolated by often lengthy prison terms, they are among those most urgently needing quality legal representation in their efforts to obtain equal justice under the law. Because many of CAL’s clients were adolescents and young adults when their offenses were committed, CAL has an especially strong interest in ensuring that young offenders are fairly treated. One of CAL’s special Projects—YEARS—attempts to redress the harsh sentences imposed on young clients whom CAL represented decades ago by focusing on the now-universally recognized brain science distinguishing young people from adults. More information about CAL is available at <https://appellate-litigation.org/>.

10. Center for Community Alternatives (“CCA”) supports and builds power with people across New York State who have been affected by mass incarceration, criminalization and community disinvestment. CCA’s work with youth includes leadership opportunities, violence prevention, career readiness, student advocacy, and programs for juveniles, including those who have been

impacted by the legal system. CCA provides support for people involved in court, including alternatives to incarceration and access to our holistic services. More information about CCA is available at <https://www.communityalternatives.org/>.

11. The Chief Defenders Association of New York (“CDANY”) is a membership organization of appointed Public Defenders, Conflict Defenders, Executive Directors of non-profit public defense offices and Administrators of Assigned Counsel Panels throughout New York State. CDANY’s organizations collectively provide the mandated service of indigent representation to close to 400,000 people annually in New York’s criminal, family and appellate courts. CDANY advocates on behalf of those attorneys and their clients to ensure that the youth who encounter the criminal legal system in New York are zealously represented and have their rights recognized and respected. More information about CDANY is available at <https://cdany.wildapricot.org/>.

12. Children’s Defense Fund (“CDF”) is a non-profit child advocacy organization that works at the intersection of well-being and racial justice for children and youth. CDF works alongside youth and families through advocacy, community organizing, direct service, and public policy. In this work, CDF’s New York state office has centered adolescent brain development in advocacy for juvenile and adult criminal legal system reforms that increase protections for children who have contact with police and reduce youth incarceration. CDF was one of the leaders

of the Raise the Age New York Coalition that worked to pass the Raise the Age law. More information about CDF is available at <https://www.childrensdefense.org/>.

13. Drive Change reimagines opportunity for justice-involved youth through careers in food and hospitality. Drive Change provides training, social support, and pathways to advance justice-involved youths' economic mobility and overall well-being. The Drive Change Fellowship is a learning and skill-building program that provides a paid opportunity for young people of color. More information about Drive Change is available at <https://drivechangenyc.org/>.

14. The Fortune Society is a 58-year-old organization that provides alternative to incarceration and reentry services to thousands of New Yorkers annually. Many of The Fortune Society's participants were prosecuted, sentenced, and incarcerated as adults for offenses they committed as teenagers. The Fortune Society has helped thousands of such people navigate reentry after suffering the trauma of adult incarceration and provides support as they seek to secure housing and employment while bearing the stigma of adult convictions. More information about The Fortune Society is available at <https://fortunesociety.org/>.

15. The Gault Center, formerly the National Juvenile Defender Center, was created in 1997 to promote justice for all children by ensuring excellence in the legal defense of youth. The Gault Center has provided expertise in state and federal cases as well as to policy-making bodies through legal research, training, and

advocacy, all grounded in the history and purpose of the juvenile legal system and the well-established developmental differences between youth and adults. The Gault Center's work is rooted in the 14th Amendment's Due Process protections affirmed for youth in *In re Gault* in 1967. The Gault Center works in partnership with youth defenders across the country to strengthen and protect the rights of youth in juvenile court. The Gault Center has participated as *amicus curiae* before the United States Supreme Court and federal and state courts across the country. More information about The Gault Center is available at <https://www.defendyouthrights.org/>.

16. Human Rights for Kids ("HRFK") is a non-profit organization dedicated to the promotion and protection of the human rights of children. HRFK incorporates research and public education, coalition building and grassroots mobilization, as well as policy and strategic litigation, to advance critical human rights on behalf of children. A central focus of HRFK's work is advocating in state legislatures and courts for comprehensive justice reform for children consistent with the U.N. Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. More information about HRFK is available at <https://humanrightsforkids.org/>.

17. Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people

can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center’s legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential amicus briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children’s unique developmental characteristics and human dignity. More information about Juvenile Law Center is available at <https://jlc.org/>.

18. Kings Against Violence Initiative, Inc. (“KAVI”) is a nonprofit youth development organization that builds a community of support around youth of color and aims to eliminate interpersonal violence from young people’s lives. KAVI uses healing-centered approaches that offer young people pathways to thrive, employing a holistic approach to violence intervention. KAVI centers prevention (in school and community), immediate intervention and community building to support youth of color. KAVI envisions a world where young people are valued as vital assets, empowered as creative problem-solvers, and embraced as partners in building safer, more just, and more connected communities. More information about KAVI is available at <https://kavibrooklyn.org/>.

19. The Legal Action Center provides pro bono legal services in New York to individuals with arrest and conviction records. The Legal Action Center’s

work includes providing direct services to New Yorkers charged with crimes in both the juvenile and adult criminal systems to help those charged access alternatives to incarceration and ease re-entry for those previously incarcerated. The Legal Action Center's Alternative to Incarceration and Reentry Coalition has helped over 30,000 individuals in New York City and New York State avoid incarceration and ease re-entry each year. More information about The Legal Action Center is available at <https://www.lac.org/>.

20. The Legal Aid Society ("The Society") is the nation's largest and oldest provider of legal services to low-income families and individuals. The Society operates three major legal practices – Civil, Criminal and Juvenile Rights – providing comprehensive legal services throughout New York City. The Society's Criminal Defense Practice represents the majority of individuals charged in Criminal Court in New York City, including representation of youth charged as Adolescent Offenders through its Adolescent Intervention and Diversion (AID) Unit. The Society's Juvenile Rights Practice (JRP) represents the majority of the children who appear before the New York City Family Courts in all five boroughs and is the primary provider of representation to children prosecuted as juvenile delinquents in Family Court in New York City, including children originally charged as adults whose cases are removed to Family Court. The Society's perspective comes from our daily contact with children and their families, as well as frequent interactions

with the courts, social service providers, and State and City agencies whose practices affect our clients and their families. In addition to representing its clients in trial and appellate courts, The Society also pursues impact litigation and other law reform initiatives. More information about The Legal Aid Society is available at <https://legalaidnyc.org/>.

21. Neighborhood Defender Service of Harlem (“NDS”) is a community-based public defender office. Since 1990, NDS has sought to improve the quality and depth of criminal, family, and civil defense for those in Harlem and Northern Manhattan who cannot afford an attorney. NDS accomplishes this by providing holistic, cross-practice representation to our clients, many of whom are youth facing accusations in the criminal legal system. More information about NDS is available at <https://neighborhooddefender.org/>.

22. New York County Defender Services (“NYCDS”) is a public defender office serving indigent clients in the borough of Manhattan since 1997. NYCDS provides comprehensive legal advocacy for its clients facing all manner of criminal charges. For clients who are Adolescent Offenders, NYCDS has a specialized Youth Advocacy Unit that represents clients in both the Youth Part and in Family Court. The unit has expertise in adolescent brain development, working with young people, and the relevant criminal and family law. It witnesses daily the disproportionate and

long-term negative impact of the criminal punishment system on youth clients. More information about NYCDS is available at <https://nycds.org/>.

23. The New York State Association of Criminal Defense Lawyers (“NYSACDL”) is a statewide bar association with over 1,500 attorneys practicing in both private and public defense. Included among its diverse membership are those who represent clients charged under Raise the Age laws and in Juvenile Delinquency proceedings in Family Court. NYSACDL advocates on behalf of those attorneys and their clients to ensure zealous representation on behalf of the youth who encounter the criminal legal system in New York. More information about NYSACDL is available at <https://nysacdl.org/>.

24. New York State Defenders Association (“NYSDA”), founded in 1967, is a not-for-profit membership association of public defenders, legal aid attorneys, 18-b counsel and private practitioners throughout the state. NYSDA operates the Public Defense Backup Center, a centralized resource which offers legal consultation, research, and training to nearly 6,000 lawyers who serve as public defense counsel in criminal and family cases across New York State. In addition to providing training and legal support to public defenders, NYSDA advocates for causes critical to the missions of the public defense community. NYSDA advocated for the passage of New York’s Raise the Age Law in 2017 along with many partner organizations and continues to support state legislative reforms that will ensure and



expand youth-based legal protections. The Court of Appeals has granted NYSDA amicus curiae status in numerous cases dealing with the rights of criminal defendants. More information about NYSDA is available at <https://www.nysda.org/>.

25. The Osborne Association (“Osborne”), founded in 1933, serves individuals, families, and communities affected by the criminal legal system. Through its programs and advocacy, Osborne challenges systems rooted in racism and retribution and fights for policies and practices that promote true safety, justice, and liberation. Reaching 16,000 people each year, Osborne’s work spans lifetimes and generations, from the children of incarcerated parents and young people with their own justice involvement, to older adults returning to communities after decades of incarceration. Osborne applies a developmental framework to all it does and believes firmly what brain science and decades of experience confirms: that children are different from adults; that brains are still developing until the mid-twenties; and that the justice system should consider and respond accordingly. More information about Osborne is available at <https://www.osborneny.org/>.

26. The Sentencing Project is a national nonprofit organization established in 1986 to engage in public policy research, education, and advocacy to promote effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults and promote racial, ethnic, economic, and gender

justice. The Sentencing Project has produced a broad range of scholarship assessing the merits of extreme sentences in jurisdictions throughout the United States. Because this case concerns the adverse consequences of prosecuting youth in an adult criminal legal system, including harming community safety and posing significant risks to incarcerated children, it raises questions of fundamental importance to The Sentencing Project. More information about The Sentencing Project is available at <https://www.sentencingproject.org/>.

27. Unchained is a nonprofit organization based in Syracuse, New York that organizes and advocates to dismantle the carceral state and guarantee access to dynamic and culturally relevant education. Staff and members of Unchained were active in the campaign to pass New York’s Raise the Age legislation, and trained community members as court watchers to monitor the implementation of Raise the Age after its passage in 2017. As a member of the national Dignity in Schools Campaign, Unchained works to challenge the systemic problem of school pushout and dismantle the school-to-prison pipeline. More information about Unchained is available at <https://www.weareunchained.org/>.

28. United Neighborhood Houses (“UNH”) is a policy and social change organization representing neighborhood settlement houses that reach 800,000 New Yorkers from all walks of life. Together with its members and other youth-serving organizations across the state, UNH strives to center positive youth development

principles in all spaces where young people are served. UNH’s goal is to protect and support our young people and offer them the opportunity to seek a path forward without the creation of nearly insurmountable barriers. To this end, it advocates for state legislative reforms that expand legal protections for youth. More information about UNH is available at <https://www.unhny.org/>.

29. Westchester Children’s Association (“WCA”) is a multi-issue child advocacy nonprofit organization dedicated to improving the lives of Westchester’s children by shaping policies and programs to meet their needs and by ensuring that children’s well-being remains at the top of the public agenda. WCA focuses on issues affecting the county’s most vulnerable youth. WCA identifies needs by analyzing data, engaging directly with youth and families, and collaborating with public and nonprofit service providers. WCA was one of the lead organizations that advocated for the passage of New York’s landmark Raise the Age law in 2017 and continues to champion policies that expand youth-based legal protections, including the Youth Justice & Opportunities Act (S.4330), Right2RemainSilent legislation (S.878-B) and Solutions Not Suspensions (S.134). More information about WCA is available at <https://wca4kids.org/>.

30. Youth Justice Network’s (“YJN”) mission is to break cycles of incarceration and build an equitable justice system by providing young people with individualized advocacy, mentorship, and opportunities to grow, thrive, and lead.

For 35 years, YJN has been at the forefront of adolescent reentry and youth justice reform on Rikers Island. YJN empowers justice-impacted young people aged 16-24 with access to advocates and opportunities for personal growth and economic independence, so they can effect change in their lives, families, and communities. More information about YJN is available at <https://youthjustice.org/>.

31. Youth Represent provides pro bono legal services and other assistance to over one-thousand youth ages 26 and under annually. Since its founding in 2006, Youth Represent has expanded to partner with dozens of youth-serving organizations across all five boroughs to provide employment, education, housing, and other civil legal services. Youth Represent also engages in policy advocacy and youth leadership development and was one of the lead organizations that successfully advocated for the passage of Raise the Age in 2017. More information about Youth Represent is available at <https://youthrepresent.org/>.

32. This case invites the Court to determine the nature of which extraordinary circumstances would prevent the removal of a juvenile criminal case to family court under Raise the Age. Given amici's day-to-day experience working with youth in the criminal justice system and their understanding of the impact of Raise the Age, they bring critically important insight and perspective to the consideration of this appeal.

33. For these reasons, as well as those in the attached brief, amici curiae respectfully submit that, consistent with the standards of Rule 500.23(a)(4), the attached brief identifies arguments and relevant scientific research that might otherwise escape the Court's attention, and that the brief would be of assistance to the Court.

34. Neither party's counsel has contributed to the content of the attached brief or participated in the preparation of the brief in any other manner.

35. No party or counsel to any party contributed money intended to fund preparation or submission of this brief.

36. No person, other than the amici curiae, their members, or their counsel, contributed money that was intended to fund preparation or submission of this brief.

Dated: October 1, 2025  
New York, New York

Respectfully submitted,



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## CERTIFICATION OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR § 500.13(c)(1) that the foregoing affirmation was prepared on a computer. A proportional spaced typeface was used as follows:

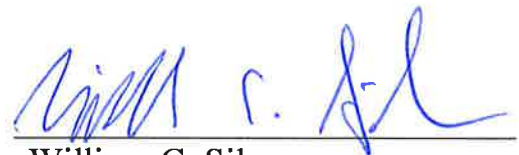
*Name of Typeface:* Times New Roman

*Point size:* 14-point

*Line spacing:* Double spaced (headings are single spaced)

*Word count:* According to Microsoft Word, the total number of words in the brief is 3,528 (including headings, but excluding the case caption, corporate disclosure statement, signature block, and certificate of compliance).

Date: October 1, 2025

  
William C. Silverman

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to the Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. § 500.1(f), counsel for *Amici Curiae* The Bronx Defenders, Brooklyn Defender Services, CASES, Center for Appellate Litigation, Chief Defenders Association of New York, Children's Defense Fund, Drive Change, The Gault Center, Human Rights for Kids, Juvenile Law Center, Kings Against Violence Initiative, Legal Action Center, The Legal Aid Society, Neighborhood Defender Service of Harlem, New York County Defender Services, New York State Association of Criminal Defense Lawyers, New York State Defenders Association, The Sentencing Project, Unchained, United Neighborhood Houses, Westchester Children's Association, and Youth Justice Network certifies that they have no parents, subsidiaries or affiliates.

*Amicus Curiae* Center for Community Alternatives has two subsidiaries: Freedom Commons, LLC and NYCCABUDS, LLC d/b/a Thrive Syracuse.

*Amicus Curiae* The Fortune Society, Inc., has 11 subsidiaries and affiliates: 107-111 East 123rd Street Housing Development Fund Corp.; 258 West 97th Street Housing Development Fund Corp.; Fortune Castle III 123 GP, Inc.; Fortune Castle III 123 L.P.; Fortune L.P. Limited Partnership; Fortune G.P.; Fortune Housing Development Fund Corp.; Fortune West 140th Street Housing Development Fund Corp.; Fortune West 140th Street GP, Inc.;

625 West 140th Street LP; and 1080 Washington Avenue Housing Development Fund Corp.

*Amicus Curiae* The Osborne Association has the following subsidiaries: Thomas Mott Osborne Memorial Fund, Inc.; Osborne Treatment Services, Inc.; MGX Phase 1 Housing Development Fund Corp.; MGX Phase 2 Housing Development Fund Corp.; 809 Westchester, LLC.; Thomas Mott Osborne Memorial Fund, Inc.; and Fulton Housing Development Fund Corp.

Dated: October 1, 2025  
New York, New York

Respectfully submitted,



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# **EXHIBIT A**

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Dated: October 1, 2025  
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<i>People v. J.J.</i> , 2022 WL 842078 (Ulster Cnty. Ct. Mar. 15, 2022) .....	2, 16, 24
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<i>People v. Lloyd F.</i> , 2025 WL 2233343 (2d Dep’t Aug. 6, 2025) .....	8, 16
<i>People v. M.M.</i> 64 Misc. 3d 259 (Nassau Cnty. Ct. 2019) .....	16, 24
<i>People v. M.R.</i> , 68 Misc. 3d 1004 (Sup. Ct. Kings Cnty. 2020) .....	8, 24
<i>People v. T.R.</i> , 2023 WL 2918936 (N.Y. Fam. Ct. Erie Cnty. Apr. 11, 2023).....	14
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	6, 7
<i>State v. Belcher</i> , 342 Conn. 1 (2022) .....	5

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N.Y. Family Court Act § 381.2.....	23, 25
N.Y. Penal Law § 160.15 .....	14



## OTHER AUTHORITIES

- Monica Anderson & JingJing Jiang, *Teens, Social Media & Technology 2018*, Pew Rsch. Ctr. (May 31, 2018), <https://www.pewresearch.org/internet/2018/05/31/teens-social-media-technology-2018/> .....15
- Amanda E. Baker, Adriana Galván & Andrew J. Fuligni, *The Connecting Brain in Context: How Adolescent Plasticity Supports Learning and Development*, 71 Dev. Cognitive Neurosci. 101486 (2025) .....17
- Carroll Bogert & Lynnell Hancock, *Superpredator: The Media Myth that Demonized a Generation of Black Youth*, The Marshall Project (Nov. 20, 2020), <https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth> .....5
- Kristine Buffington, Carly B. Dierkhising & Shawn C. Marsh, *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency*, Nat’l Council of Juvenile and Family Court Judges (2010), [https://www.ncjfcj.org/wp-content/uploads/2012/02/trauma-bulletin\\_0.pdf](https://www.ncjfcj.org/wp-content/uploads/2012/02/trauma-bulletin_0.pdf) .....21
- Jeffrey A. Butts, Gordon Bazemore, & Aundra Saa Meroe, *Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development*, Wash., DC: Coal. for Juvenile Justice (2010) .....20
- Jeffrey A. Butts & Gina Moreno, *Minor Role IV: Violent Crime More of an Adult Problem Today*, John Jay Coll. of Crim. Justice City Univ. of N.Y., Rsch. & Evaluation Ctr. (Aug. 25, 2025), <https://johnjayrec.nyc/2025/08/25/databit202502/> .....26
- Center on the Developing Child at Harvard University, *\*InBrief: Early Childhood Program Effectiveness\** (May 20, 2007), <https://developingchild.harvard.edu/resources/inbriefs/inbrief-early-childhood-program-effectiveness/> .....17

Kristen Clements-Nolle & Rachel Waddington, <i>Adverse Childhood Experiences and Psychological Distress in Juvenile Offenders: The Protective Influence of Resilience and Youth Assets</i> , 64 J. Adolesc. Health 49-55 (2019), <a href="https://www.jahonline.org/article/S1054-139X(18)30440-3/fulltext">https://www.jahonline.org/article/S1054-139X(18)30440-3/fulltext</a> .....	17
Ronald E. Dahl, <i>Adolescent Brain Development: A Period of Vulnerabilities and Opportunities</i> , Keynote Address, 1021 Annals N.Y. Acad. Sci. 1 (2004), <a href="https://doi.org/10.1196/annals.1308.001">https://doi.org/10.1196/annals.1308.001</a> .....	21
Brian Evans, <i>Winning the Campaign: State Trends in Fighting the Treatment of Children As Adults in the Criminal Justice System</i> , Campaign for Youth Justice, <a href="https://www.prisonpolicy.org/scans/cfyj_state_trends_youth_in_adult_courts_2005_2020.pdf">https://www.prisonpolicy.org/scans/cfyj_state_trends_youth_in_adult_courts_2005_2020.pdf</a> .....	6
Executive Order (A. Cuomo), N.Y. Comp. Codes R. & Regs. tit. 9, § 8.131.....	6
Final Report of the Governor’s Commission on Youth, Public Safety, and Justice, Recommendations for Juvenile Justice Reform in New York State, <a href="https://www.governor.ny.gov/sites/default/files/atoms/files/Report_ofCommissiononYouthPublicSafetyandJustice_0.pdf">https://www.governor.ny.gov/sites/default/files/atoms/files/Report_ofCommissiononYouthPublicSafetyandJustice_0.pdf</a> .....	<i>passim</i>
Eli Hager, <i>The Fine Print in New York’s Raise the Age Law</i> , The Marshall Project (Apr. 14, 2017), <a href="https://www.themarshallproject.org/2017/04/14/the-fine-print-in-new-york-s-raise-the-age-law">https://www.themarshallproject.org/2017/04/14/the-fine-print-in-new-york-s-raise-the-age-law</a> .....	10
Eli Hager, <i>The Willie Bosket Case</i> , The Marshall Project (Dec. 29, 2014), <a href="https://www.themarshallproject.org/2014/12/29/the-willie-bosket-case">https://www.themarshallproject.org/2014/12/29/the-willie-bosket-case</a> .....	4
Margo Gardner & Laurence Steinberg, <i>Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: an Experimental Study</i> , 41 Developmental Psychology 625 (2005).....	9

Aliya-Begum Jessa, Megan French-Marcelin, Jason Rodriguez & Darby Larkin, <i>Unlocking Potential: The Role of Community-Based Alternatives in Strengthening Public Safety in N.Y.S.</i> , New York ATI & Reentry Coal. (2024), <a href="https://www.lac.org/resource/unlocking-potential-the-role-of-community-based-alternatives-in-strengthening-public-safety">https://www.lac.org/resource/unlocking-potential-the-role-of-community-based-alternatives-in-strengthening-public-safety</a> .....	21
Mark W. Lipsey, <i>The Primary Factors that Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview</i> , Victims & Offenders 4, No. 2 (Apr. 2009), <a href="https://doi.org/10.1080/15564880802612573">https://doi.org/10.1080/15564880802612573</a> .....	20
Julian W. Mack, <i>The Juvenile Court</i> , 23 Harv. L. Rev. 104 (1909).....	23
Richard Mendel, <i>Diversion: A Hidden Key to Combating Racial and Ethnic Disparities in Juvenile Justice</i> , The Sentencing Project (2022), <a href="https://www.sentencingproject.org/app/uploads/2022/10/Diversion-A-Hidden-Key-to-Combating-Racial-and-Ethnic-Disparities-in-Juvenile-Justice.pdf">https://www.sentencingproject.org/app/uploads/2022/10/Diversion-A-Hidden-Key-to-Combating-Racial-and-Ethnic-Disparities-in-Juvenile-Justice.pdf</a> .....	26
Shari Miller-Johnson & Joel Rosch, <i>Juvenile or Adult Court: Research on Future Offending</i> , Center for Child and Family Policy, Duke Univ. 21 (last visited Sept. 25, 2025), <a href="https://evidence2impact.psu.edu/wp-content/uploads/2023/05/s_ncfis03c04.pdf#:~:text=Comparable%20youth%20in%20the%20New%20York%20adult,to%20be%20arrested%20for%20felony%20property%20crimes">https://evidence2impact.psu.edu/wp-content/uploads/2023/05/s_ncfis03c04.pdf#:~:text=Comparable%20youth%20in%20the%20New%20York%20adult,to%20be%20arrested%20for%20felony%20property%20crimes</a> .....	23
Ashley Nellis, <i>Addressing the Collateral Consequences of Convictions for Young Offenders</i> , The Champion (Aug. 2011).....	28
Stephen A. Newman, <i>Foreword: The Past, Present, and Future of Juvenile Justice Reform in New York State</i> , 56 N.Y.L. Sch. L. Rev. 1264 (2011-2012), <a href="https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1289&amp;context=fac_articles_chapters">https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1289&amp;context=fac_articles_chapters</a> .....	5
N.Y. Assembly Debate on 1978 N.Y. Assembly Bill 3355, July 19, 1978, <a href="https://url.us.m.mimecastprotect.com/s/G2uBCpYX20Cn48L1WfPfqTGKgx0?domain=nyslibrary.libanswers.com">https://url.us.m.mimecastprotect.com/s/G2uBCpYX20Cn48L1WfPfqTGKgx0?domain=nyslibrary.libanswers.com</a> .....	4

N.Y. Assembly Debate on 2017 N.Y. Assembly Bill A3009C, Apr. 8, 2017, <a href="https://nyassembly.gov/raisetheage/transcripts/full-debate.pdf">https://nyassembly.gov/raisetheage/transcripts/full-debate.pdf</a> .....	<i>passim</i>
N.Y. Div. of Crim. Just. Servs., <i>Crime in New York State 2022 – Final Data</i> (2023), <a href="https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%20Crime%20in%20NYS%202022%20Data.pdf">https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%20Crime%20in%20NYS%202022%20Data.pdf</a> .....	13
News Release from Assembly Speaker Carl E. Heastie, New York Raises the Age of Adult Criminal Responsibility (Apr. 7, 2017), <a href="https://nyassembly.gov/Press/?sec=story&amp;story=74255">https://nyassembly.gov/Press/?sec=story&amp;story=74255</a> .....	10
<i>Race and Juvenile Justice</i> , Nat’l Ass’n Crim. Def. & Civ. Rts. L. (Nov. 29, 2022), <a href="https://www.nacdl.org/Content/Race-and-Juvenile-Justice">https://www.nacdl.org/Content/Race-and-Juvenile-Justice</a> .....	27
Elizabeth S. Scott & Laurence Steinberg, <i>Adolescent Development and the Regulation of Youth Crime</i> . <i>Future of Children</i> 18, no. 2 (Fall 2008).....	9
Riya S. Shah & Jean Stout, <i>Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records</i> , <i>Juvenile L. Ctr.</i> (2016), <a href="https://jlc.org/sites/default/files/publication_pdfs/Future%20Interrupted%20-%20final%20for%20web_0.pdf">https://jlc.org/sites/default/files/publication_pdfs/Future%20Interrupted%20-%20final%20for%20web_0.pdf</a> .....	23
S.I. Singer & D. McDowell, <i>Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law</i> , Nat’l Inst. of Justice, <i>Law &amp; Soc’y Review</i> , Vol. 22, Issue 3, at 521-535 (1988), <a href="https://nij.ojp.gov/library/publications/criminalizing-delinquency-deterrent-effects-new-york-juvenile-offender-law">https://nij.ojp.gov/library/publications/criminalizing-delinquency-deterrent-effects-new-york-juvenile-offender-law</a> .....	5
Merril Sobie, <i>New York Juvenile Justice System</i> , 26 N.Y.L. Sch. L. Rev. 677 (1981), <a href="http://digitalcommons.pace.edu/lawfaculty/366/">http://digitalcommons.pace.edu/lawfaculty/366/</a> .....	4
Laurence Steinberg & Elizabeth S. Scott, <i>Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty</i> , 58 <i>AmPsychologist</i> 1009 (2003).....	9

White paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers, Center for Law, Brain & Behavior at Mass. Gen. Hosp. (2022), <a href="https://clbb.mgh.harvard.edu/wp-content/uploads/CLBB-White-Paper-on-the-Science-of-Late-Adolescence-3.pdf">https://clbb.mgh.harvard.edu/wp- content/uploads/CLBB-White-Paper-on-the-Science-of-Late- Adolescence-3.pdf</a> .....	9
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## **IDENTITY AND INTEREST OF *AMICI CURIAE***

The organizations submitting this brief work with, and on behalf of, adolescents and young adults in a variety of settings and at every stage of the juvenile and criminal legal system.<sup>1</sup> Amici's advocacy for youth-based protections in the legal system rests on a deep understanding of the differences between adults and children and the power of age-appropriate interventions to transform young people's lives and make communities safer. Many amici were part of the original Raise the Age NY campaign or prior efforts to raise the age of criminal responsibility in New York and other states. Many amici provide representation and programming to 16- and 17-year-olds in criminal and family courts and know from collective experience that, as a general rule, family court is the appropriate venue to hold adolescents accountable for their conduct.

## **INTRODUCTION**

The New York State Legislature passed Raise the Age in 2017 in recognition of the fundamental biological and psychological differences between children and adults, with the express purpose of ensuring that juveniles are treated differently than

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<sup>1</sup>Amici are The Bronx Defenders, Brooklyn Defender Services, CASES, Center for Appellate Litigation, Center for Community Alternatives, Chief Defenders Association of New York, Children's Defense Fund, Drive Change, The Fortune Society, The Gault Center, Human Rights for Kids, Juvenile Law Center, Kings Against Violence Initiative, Legal Action Center, The Legal Aid Society, Neighborhood Defender Service of Harlem, New York County Defender Services, New York State Association of Criminal Defense Lawyers, New York State Defenders Association, The Osborne Association, The Sentencing Project, Unchained, United Neighborhood Houses, Westchester Children's Association, Youth Justice Network, and Youth Represent (collectively, the "Juvenile Justice Amici").

adults given their unique characteristics and needs. It did so after careful consideration of extensive scientific evidence, Supreme Court precedent, stakeholder feedback, and key principles and best practices in juvenile justice. To address the significant discrepancies between children and adults, Raise the Age applies a presumption of removal of nearly all juvenile cases to family court, which, according to one of the bill’s drafters, allows children to not only “get superior services, but [also] . . . to get better outcomes for their lives . . . by not receiving a criminal record at the end of all this so that they could change their life around.”<sup>2</sup>

Raise the Age carves out especially serious felonies—cases involving allegations of significant physical injury, a sexual offense, or display of a deadly weapon—from removal. CPL § 722.20(4). However, for cases that do not include any of these elements, a prosecutor must demonstrate “extraordinary circumstances” to prevent removal to family court. “Extraordinary” means what it says—unusual and extremely rare. Consistent with Raise the Age’s legislative history and intent, this requires a showing of “highly unusual and heinous facts” and “strong proof that the young person is not amenable or would not benefit in any way from the heightened services in the family court.” *People v. J.J.*, 2022 WL 842078, at \*2 (Ulster Cnty. Ct. Mar. 15, 2022) (quoting N.Y. Assembly Debate of 2017, at 39.

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<sup>2</sup> N.Y. Assembly Debate on 2017 N.Y. Assembly Bill A3009C, Apr. 8, 2017, at 21, <https://nyassembly.gov/raisetheage/transcripts/full-debate.pdf> (hereinafter “N.Y. Assembly Debate of 2017”).

This individualized inquiry must be grounded in principles of adolescent development and evidence-based best practices in juvenile justice, and must incorporate consideration of mitigating circumstances even when the required showing is made.

No such showing was made here. The lower courts disregarded both the express language of the statute and the legislative intent behind Raise the Age, applying a broad interpretation of “extraordinary” to prevent removal of Mr. Guerrero’s serious but not exceptional robbery and burglary charges. They failed to engage in the required individualized inquiry; did not evaluate whether Mr. Guerrero’s actions were “heinous and highly unusual,” much less make such a finding; prematurely and incorrectly weighed mitigating circumstances; and improperly considered confidential family court records in finding extraordinary circumstances. Upholding the Appellate Division’s decision in this case would eviscerate Raise the Age’s protections. Far from serving New York’s youth and their communities, such an interpretation would force many of the youth Raise the Age sought to protect into adult criminal court and perpetuate the very harms Raise the Age sought to address.



## **ARGUMENT**

### **I. New York’s landmark Raise the Age Law ended a shameful period in which New York’s youth justice system fell behind nearly every state in the nation.**

Prior to Raise the Age, the last major legislative reform of the juvenile legal system in New York occurred in 1978 with the passage of the Juvenile Offender Act (the “Act”). While Raise the Age did not repeal the Act, the spirit and text of Raise the Age directly rejected the attitudes that underlay the Act’s passage.

#### **A. The Raise the Age Law rejected unempirical and panic-driven responses to youth crime that characterized past punitive legislation such as the Juvenile Offender Act of 1978.**

The Juvenile Offender Act of 1978 passed quickly in an emergency legislative session, in response to public uproar over a court issuing the then five-year maximum juvenile sentence to Willie Bosket, a 15-year-old adjudicated for killing two people on the subway.<sup>3</sup> The Act designated certain serious offenses for which children as young as 13 could be subject to prosecution in adult criminal courts for the first time since 1909.<sup>4</sup> Some legislators objected that the Act dealt with “the symptoms and not with the cause” of youth crime,<sup>5</sup> and that the legislature was

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<sup>3</sup> Eli Hager, *The Willie Bosket Case*, The Marshall Project (Dec. 29, 2014), <https://www.themarshallproject.org/2014/12/29/the-willie-bosket-case>.

<sup>4</sup> Merrill Sobie, *The Juvenile Offender Act: Effectiveness and Impact on the New York Juvenile Justice System*, 26 N.Y.L. Sch. L. Rev. 677, 677 (1981), <http://digitalcommons.pace.edu/lawfaculty/366/>; N.Y. Crim. Proc. Law § 1.20(42).

<sup>5</sup> N.Y. Assembly Debate on 1978 N.Y. Assembly Bill 3355, July 19, 1978, at 5295, <https://url.us.m.mimecastprotect.com/s/G2uBCpYX20Cn48L1WfPfqGKgx0?domain=nyslibrary.libanswers.com> (hereinafter “N.Y. Assembly Debate of 1978”).

sacrificing a focus on prevention to “show that we are tough on crime.”<sup>6</sup> Over the next two decades, most states followed New York and expanded the grounds for steering juvenile cases to adult criminal court.<sup>7</sup>

Unsurprisingly to its opponents, the effects of the Act on youth crime rates were disappointing. A study published ten years after the law passed found that it failed to deter youth crime.<sup>8</sup> Nevertheless, the public sensationalization of youth crime continued unabated. This phenomenon was exemplified and reached its apex in the mid-1990s with the racist “superpredator” myth, espoused by political scientist John DiIulio, who claimed that a new generation of violent and remorseless juveniles had emerged in the U.S. This myth led to mass incarceration and racist demonization of Black youth nationwide.<sup>9</sup> Although embraced by politicians and the media at the time, the myth has now been thoroughly debunked.<sup>10</sup>

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<sup>6</sup> N.Y. Assembly Debate of 1978, at 5268.

<sup>7</sup> Stephen A. Newman, *Foreword: The Past, Present, and Future of Juvenile Justice Reform in New York State*, 56 N.Y.L. Sch. L. Rev. 1264, 1271 (2011-2012), [https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1289&context=fac\\_articles\\_chapter\\_s](https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1289&context=fac_articles_chapter_s).

<sup>8</sup> S.I. Singer & D. McDowell, *Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law*, Nat’l Inst. of Justice, Law & Soc’y Review, Vol. 22, Issue 3, at 521-535 (1988), <https://nij.ojp.gov/library/publications/criminalizing-delinquency-deterrent-effects-new-york-juvenile-offender-law>.

<sup>9</sup> See, e.g., Carroll Bogert & Lynnell Hancock, *Superpredator: The Media Myth that Demonized a Generation of Black Youth*, The Marshall Project (Nov. 20, 2020), <https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth>.

<sup>10</sup> *Id.*; Connecticut Supreme Court holding that “the super-predator theory was baseless when it originally was espoused” by a university professor in the mid-1990s and “has since been thoroughly debunked and universally rejected as a myth . . . .” *State v. Belcher*, 342 Conn. 1, 16 (2022).

The tide finally turned in the early 2000s. Beginning in 2005, the Supreme Court held in a series of landmark cases that children are constitutionally different from adults due to their “objective immaturity, vulnerability, and lack of true depravity . . .” and that the unique attributes of youth must be considered in all criminal prosecutions.<sup>11</sup> Slowly, states began recognizing these developmental differences. But the New York Legislature lagged behind.<sup>12</sup>

In 2014, then-Governor Cuomo signed Executive Order 131 to establish the Commission on Youth, Public Safety, and Justice (hereinafter “the Commission”).<sup>13</sup> Recognizing the long overdue need for reform, Governor Cuomo directed the Commission to “develop a concrete plan to raise the age of juvenile jurisdiction in the most effective and prudent manner possible, and to make other specific recommendations as to how New York State’s juvenile and criminal justice systems could better serve youth, improve outcomes, and protect communities.”<sup>14</sup>

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<sup>11</sup> See, e.g., *Roper v. Simmons*, 543 U.S. 551, 554 (2005); *Graham v. Florida*, 560 U.S. 48, 78 (2010); *Miller v. Alabama*, 567 U.S. 460, 490-91 (2012).

<sup>12</sup> Brian Evans, *Winning the Campaign: State Trends in Fighting the Treatment of Children As Adults in the Criminal Justice System*, Campaign for Youth Justice, at 6-8, [https://www.prisonpolicy.org/scans/cfyj\\_state\\_trends\\_youth\\_in\\_adult\\_courts\\_2005\\_2020.pdf](https://www.prisonpolicy.org/scans/cfyj_state_trends_youth_in_adult_courts_2005_2020.pdf).

<sup>13</sup> See Executive Order (A. Cuomo), N.Y. Comp. Codes R. & Regs. tit. 9, § 8.131.

<sup>14</sup> Final Report of the Governor's Commission on Youth, Public Safety, and Justice, Recommendations for Juvenile Justice Reform in New York State (hereinafter “Commission Report”), at 1 (citing Executive Order (A. Cuomo), N.Y. Comp. Codes R. & Regs. tit. 9, § 8.131), [https://www.governor.ny.gov/sites/default/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice\\_0.pdf](https://www.governor.ny.gov/sites/default/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice_0.pdf).

The Commission conducted a comprehensive review of laws and procedures in New York and other states, as well as developments in the science of adolescent brain development and best practices in juvenile justice.<sup>15</sup> It received input from key stakeholders: young people with justice system involvement, their parents and families, crime victims, law enforcement, experts in psychiatry and children’s mental health, social service administrators, not-for-profit providers, youth detention administrators, defense attorneys, prosecutors, judges, and civil rights organizations.<sup>16</sup>

**B. Decades of consensus on adolescent brain development served as the bedrock for the Commission’s recommendations and Raise the Age legislation.**

In formulating its recommendations, the Commission relied heavily on the robust research on adolescent brain development recognized by the Supreme Court in several landmark decisions affirming the biological and psychological differences between adult and adolescent brains.<sup>17</sup> This research informed the cornerstone of what became New York’s Raise the Age legislation. As lower courts have noted, the framework created by Raise the Age for removal of cases from youth parts of adult criminal court to family court reflects a “recognition on the part of the New York State Legislature that justice requires that adolescent offenders, as well as juvenile

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<sup>15</sup> Commission Report, at 8.

<sup>16</sup> *Id.* at 155-59.

<sup>17</sup> See *Roper*, 543 U.S. at 551; *Graham*, 560 U.S. at 48; *J.D.B. v. North Carolina*, 564 U.S. 261, 271-77 (2011); *Miller*, 567 U.S. at 460.

offenders, be treated differently than adults within the criminal justice system, given the unique circumstances and needs” of adolescents. *People v. J.P.*, 63 Misc. 3d 635, 649 (Sup. Ct. Bronx Cnty. 2019); *see also People v. Lloyd F.*, 2025 WL 2233343, at \*4 (2d Dep’t Aug. 6, 2025) (reading “the Legislature’s deliberate use of the phrase ‘extraordinary circumstances’ in the Raise the Age legislation as reflecting a clear policy choice – that adolescent offenders should be prosecuted in criminal court only in the most exceptional circumstances”); *People v. Aaron VV.*, \_\_ A.D.3d \_\_, 2025 WL 2664302, at \*3 (3d Dep’t Sept. 18, 2025) (reading the legislative history as illustrating “the Legislature’s intent to create a sweeping presumption in favor of removing these cases to Family Court and that the People’s burden is exceedingly high on a motion to prevent removal”); *People v. M.R.*, 68 Misc. 3d 1004, 1008 (Sup. Ct. Kings Cnty. 2020); *see also People v. Francis*, 30 N.Y.3d 737, 749-50 (2018).

The Commission documented how “[t]he differences between adolescents and adults can be categorized into three important areas: (1) self-regulation, particularly in emotionally charged contexts; (2) sensitivity to peer influence and immediate rewards; and (3) ability to make decisions that require an orientation toward the future.”<sup>18</sup> It underscored that “adolescents lack mature capacity for self-regulation because the brain system that influences pleasure-seeking and emotional

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<sup>18</sup> Commission Report, at 17.

reactivity develops more rapidly than the brain system that supports self-control.”<sup>19</sup>

When faced with challenging decisions, younger brains have less life experience to rely on to assess risk and reward, and are highly influenced by the potential for immediate rewards.<sup>20</sup> Further intensifying adolescents’ risk-inclination is the characteristic struggle to consider consequences, particularly ones with long-term impact.<sup>21</sup> Adolescents’ limited ability to plan for the future, no matter the severity of potential consequences, makes short-term risk and reward the central considerations during decision making.<sup>22</sup> Finally, adolescents are more susceptible than adults to peer influence in risky situations.<sup>23</sup>

The Commission’s final report set forth a list of 38 recommendations grounded in the consensus that 16- and 17-year-olds are developmentally still children. It was with these recommendations in mind that the Commission centered its work on raising the age that youths would automatically be charged in adult courts

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<sup>19</sup> Commission Report, at 17, citing Elizabeth S. Scott and Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, *Future of Children* 18, no. 2 (Fall 2008).

<sup>20</sup> Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *AmPsychologist* 1009, 1012 (2003).

<sup>21</sup> White paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers, Center for Law, Brain & Behavior at Mass. Gen. Hosp. (2022), at 14-16 (hereinafter “White paper”), <https://clbb.mgh.harvard.edu/wp-content/uploads/CLBB-White-Paper-on-the-Science-of-Late-Adolescence-3.pdf>.

<sup>22</sup> *Id.*

<sup>23</sup> Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: an Experimental Study*, 41 *Developmental Psychology* 625, 632 (2005).

in New York from 16 to 18.<sup>24</sup> The report outlined proven strategies that reduce recidivism while simultaneously producing positive outcomes for youth and families, including family therapy, cognitive behavior therapy, restorative mediation, substance abuse treatment, and mentoring.<sup>25</sup> Unanimously adopted, the recommendations helped lay the foundation for 2017's Raise the Age legislation.

Raise the Age did not completely reverse the punitive juvenile justice laws enacted in the past. The Juvenile Offender Act of 1978 remains intact, and New York continues to automatically prosecute youth aged 13 to 15 as adults for certain felonies, such as homicide and arson.<sup>26</sup> Even so, Raise the Age was a critical step toward ending a shameful chapter in which New York fell behind nearly every state in the nation in its treatment of youth.<sup>27</sup> Upon its passage, New York State Assembly Speaker Carl Heastie said, "We have won a tremendous victory for communities across the state. . . . This is the beginning of a new chapter . . . where young people are given a chance to grow up and recover from their past wrongdoing without forfeiting their futures."<sup>28</sup>

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<sup>24</sup> Commission Report, at 28-33.

<sup>25</sup> Commission Report, at 23-26.

<sup>26</sup> N.Y. Crim. Proc. Law § 1.20(42).

<sup>27</sup> 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>.

<sup>28</sup> News Release from Assembly Speaker Carl E. Heastie, New York Raises the Age of Adult Criminal Responsibility (Apr. 7, 2017), <https://nyassembly.gov/Press/?sec=story&story=74255>.

**II. The fundamental goal of New York’s Raise the Age Law relies on a strict definition of the “Extraordinary Circumstances” exception.**

**A. Raise the Age’s legislative history makes clear that when felony allegations fall outside the range of specifically defined criminal acts or consequences, a youth should be subject to prosecution as an adult only in “extremely rare and exceptional cases.”**

Assembly Member Joseph Lentol, one of the bill’s drafters, explained the structure and purpose of the Raise the Age legislation during the Assembly floor debate. In order to reach consensus on the legislation, legislators agreed that all felony cases would start in the criminal court, with the clear legislative intention that the overwhelming bulk of the cases would be promptly transferred to family court.<sup>29</sup> Under a negotiated compromise, cases involving allegations of significant physical injury, any sexual offense, or display of a deadly weapon would remain in the adult system unless the prosecutor consented to removal. N.Y. Crim. Proc. Law § 722.23(2)(c)i-iii. But to prevent the transfer of other cases, the prosecution would have to demonstrate the presence of extraordinary circumstances, “a high standard for the DA to meet.”<sup>30</sup> *See generally* N.Y. Crim. Proc. Law § 722.23(1)(a).

Assembly Member Lentol explained that this two-tiered framework was designed to ensure that “truly violent felons would stay in the criminal part, and those kids who were not violent would be able to find their way to the family court where they could not only get superior services, but would be able to get better

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<sup>29</sup> N.Y. Assembly Debate of 2017, at 37.

<sup>30</sup> *Id.* at 39.



outcomes for their lives not only with the services that were employed, but by not receiving a criminal record at the end of all this so that they could change their life around.”<sup>31</sup> He emphasized that the exacting “extraordinary circumstances” test would erect an exceedingly high bar for retention in the youth part: “[t]ransfer to the family court should be denied only when highly unusual and heinous facts are proven and there is strong proof that the young person is not amenable or would not benefit in any way from the heightened services in the family court.”<sup>32</sup> He stressed that in determining whether extraordinary circumstances were present in a particular case, courts should consider aggravating factors, such as “[d]id the defendant act in an especially cruel and heinous manner? or [w]as the defendant a ringleader who threatened and coerced reluctant youths to participate in the crimes?”<sup>33</sup>

These questions about aggravating circumstances clarify the threshold that must be met to rebut the presumption of removal. Even if this threshold of extraordinarily aggravating circumstances is met, mitigating circumstances must still be considered and “could result in denial of an extraordinary circumstances finding.” Mitigating circumstances could include: whether the young person faced “economic difficulties, substandard housing, poverty, learning difficulties, of course, . . . lack of insight and susceptibility to peer pressure due to immaturity,

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<sup>31</sup> N.Y. Assembly Debate of 2017, at 21

<sup>32</sup> N.Y. Assembly Debate of 2017, at 39.

<sup>33</sup> *Id.* at 40.

absence of positive role models, . . . abuse of alcohol or controlled substances by the defendant, by family or by peers.”<sup>34</sup>

The theme that emerges from the Assembly’s debate is that extraordinary circumstances were intended to be exactly that—*extraordinary*. Furthermore, the Legislature plainly intended reviewing courts to look beyond the statutory elements of an alleged offense.

**B. First degree burglary and robbery are serious offenses, but they are not extraordinary.**

The Legislature intended that the “extraordinary circumstances” exception be construed narrowly for “one out of 1,000 cases”<sup>35</sup> characterized by “unusual and heinous facts.”<sup>36</sup> Far from unusual, burglary and robbery are charged tens of thousands of times each year in New York. In 2022, arrests were made for over 30,000 burglaries and over 20,000 robberies statewide.<sup>37</sup>

New York courts have repeatedly rejected the supposition that robbery cases absent highly unusual aggravating factors rise to the level of being considered “extraordinary.” The crime of robbery, by its statutory definition, involves the use

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 39.

<sup>37</sup> According to 2022 DCJS New York State Crime Report, 31,982 burglaries and 21,975 robberies were reported across the state of New York in 2022. N.Y. Div. of Crim. Just. Servs., *Crime in New York State 2022 – Final Data* (2023), <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%20Crime%20in%20NYS%202022%20Data.pdf>.

or threat of force.<sup>38</sup> Consequently, elements such as the presence of a weapon or the occurrence of injury are not exceptional. Even in cases in which a deadly weapon was brandished or the victim sustained an injury, courts have held such conduct to be characteristic of the degree of violence common in robbery cases and insufficient to meet the high bar for extraordinary circumstances. *See, e.g., J.P.*, 63 Misc. 3d 635; *People v. L.L.*, 2019 WL 3810110, at \*7-\*9 (Sup. Ct. Queens Cnty. July 19, 2019); *People v. T.R.*, 2023 WL 2918936, at \*3 (N.Y. Fam. Ct. Erie Cnty. Apr. 11, 2023).

The well-recognized qualities that characterize young people—impulsivity, susceptibility to peer pressure, and sensation-seeking behavior—squarely align with the characteristics of many robberies and burglaries. These offenses often emanate from a young person’s perceived sense of immediate gratification and a lack of appreciation for negative impact and consequences.<sup>39</sup> Mr. Guerrero’s alleged conduct, an offense committed with three other young people, two of whom were adults, reflects this well-established pattern of peer-driven, high-risk behavior. Far from being highly unusual events, robbery and burglary, without the presence of

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<sup>38</sup> Under N.Y. Penal Law § 160.15, a person is guilty of robbery in the first degree when he forcibly steals property and when, in the commission of the crime or immediate flight therefrom, he: (1) causes serious physical injury to a non-participant in the crime; (2) is armed with a deadly weapon; (3) uses or threatens the immediate use of a dangerous instrument; or (4) displays what appears to be a firearm.

<sup>39</sup> Commission Report, at 17.

aggravating factors, are precisely the types of offenses the Legislature contemplated when enacting Raise the Age.<sup>40</sup>

**C. Immature social media engagement is not exceptionally cruel or heinous.**

Mr. Guerrero’s use of social media following the incident is reflective of typical teenage recklessness, not extraordinary behavior justifying retaining the case in criminal court. Such behavior falls far short of the level of heinousness contemplated by the “extraordinary circumstances” standard. Since teenagers live much of their lives online, it is no surprise that their social media can reflect a stream of consciousness where impulsive and negative thoughts appear alongside ordinary and harmless ones. In 2018, the Pew Research Center reported 95% of teenagers had access to a smartphone and nearly half of teens described being “almost constantly” online.<sup>41</sup> Adolescents’ lack of impulse control, paired with near constant access to phones and apps, can lead to crude and risky online posts.

Courts applying the Raise the Age standard have declined to treat threatening, boasting, or other negative online behaviors as “extraordinary.” In *People v. A.M.*, the court found that the young person’s behavior, which included social media postings to the alleged victim, did not overcome the strong presumption of removal.

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<sup>40</sup> N.Y. Assembly Debate of 2017, at 84, suggesting that aggravating facts such as a string of four robberies committed in one day “could be” extraordinary, and 92.

<sup>41</sup> Monica Anderson & JingJing Jiang, *Teens, Social Media & Technology 2018*, Pew Rsch. Ctr. (May 31, 2018), <https://www.pewresearch.org/internet/2018/05/31/teens-social-media-technology-2018/>.

2024 WL 2266307, at \*5, \*10 (Sup. Ct. Putnam Cnty. May 14, 2024). In *People v. Lloyd F.*, the Appellate Division found that the defendant’s behavior, including brandishing a firearm on a livestream, “exhibited the very characteristics of adolescent decision-making” reinforcing the appropriateness of adjudication in family court. 2025 WL 2233343, at \*6. Notably, in *People v. M.M.*, the defendant used social media to “lure” the complainant to a location in order to rob them, yet the court still concluded this type of conduct did not rise to the level of “cruel and heinous” behavior warranting retention in criminal court. 64 Misc. 3d 259, 266, 272 (Nassau Cnty. Ct. 2019).

**III. Before determining that a young person is not amenable to services, courts are required to make an individualized inquiry into their needs and the extent to which those needs have been addressed.**

As reflected by the plain meaning of the word “extraordinary” and the legislative history, the Legislature intended to set a high bar for denials of transfer to family court under Raise the Age, utilizing a two-part test that requires the prosecution to (1) prove “highly unusual and heinous facts” and (2) present “strong proof that the young person is not amenable or would not benefit in any way from the heightened services in family court.”<sup>42</sup>*J.J.*, 2022 WL 842078, at \*2. In Mr. Guerrero’s case, the trial court relied partly on the second part of the test in granting the motion to prevent removal, specifically stating that “[Mr. Guerrero has] been

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<sup>42</sup> N.Y. Assembly Debate of 2017, at 39.

engaged in services for over a period of five years.”<sup>43</sup> This determination, affirmed by the Appellate Division,<sup>44</sup> was made without sufficient inquiry into Mr. Guerrero’s need for services or the extent to which the services previously provided through the family court met those needs. Moreover, it ignored the established principles of child and adolescent development which instruct that as children’s brains grow and develop, their amenability and ability to benefit from services and interventions improves.<sup>45</sup>

**A. History of service engagement does not amount to strong proof that a young person is not amenable to services.**

It is widely agreed that children benefit from programming focused on academic and social emotional development, and that children with disabilities have heightened needs for services and interventions starting from infancy.<sup>46</sup> Childhood trauma and chronic stress triggered by adverse childhood experiences (ACEs) place children in greater need of behavioral health interventions.<sup>47</sup> This was absolutely true for Mr. Guerrero, whose mental health diagnoses were exacerbated by

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<sup>43</sup> R.43.

<sup>44</sup> *People v. Guerrero*, 235 A.D.3d 1276, 1278 (4th Dep’t 2025).

<sup>45</sup> Amanda E. Baker, Adriana Galván & Andrew J. Fuligni, *The Connecting Brain in Context: How Adolescent Plasticity Supports Learning and Development*, 71 Dev. Cognitive Neurosci. 101486 (2025).

<sup>46</sup> Center on the Developing Child at Harvard University, *\*InBrief: Early Childhood Program Effectiveness\** (May 20, 2007), <https://developingchild.harvard.edu/resources/inbriefs/inbrief-early-childhood-program-effectiveness/>.

<sup>47</sup> Kristen Clements-Nolle & Rachel Waddington, *Adverse Childhood Experiences and Psychological Distress in Juvenile Offenders: The Protective Influence of Resilience and Youth Assets*, 64 J. Adolesc. Health 49-55 (2019), [https://www.jahonline.org/article/S1054-139X\(18\)30440-3/fulltext](https://www.jahonline.org/article/S1054-139X(18)30440-3/fulltext).

extremely difficult life circumstances stemming from racial and economic inequality.

Mr. Guerrero has been diagnosed with Bipolar Disorder and ADHD.<sup>48</sup> Just months before he was born, his father died after being arrested by the Syracuse City Police.<sup>49</sup> At six months old, Mr. Guerrero suffered a head injury.<sup>50</sup> The injury induced seizures and he was hospitalized for 12 days.<sup>51</sup> He was then removed from the care of his mother and placed into the custody of a family friend, E.W.<sup>52</sup> He developed a close relationship with E.W. and continued to stay with her periodically after being returned to his mother's custody, but suffered further trauma when E.W. passed away in 2013.<sup>53</sup> At age 3, Mr. Guerrero's blood test revealed high lead blood levels.<sup>54</sup> His medical records included a childhood diagnosis of hyperhydration—forcibly being given excess amounts of water over a short period of time—nearly causing fatal disturbance in his brain functions.<sup>55</sup> He reported to Probation that he began smoking marijuana and consuming alcohol at age 6, and had been using MDMA since age 9.<sup>56</sup> Based upon his Emotional Disturbance Decision Tree

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<sup>48</sup> R.42.

<sup>49</sup> R.61.

<sup>50</sup> R.63.

<sup>51</sup> R.64.

<sup>52</sup> R.61.

<sup>53</sup> *Id.*

<sup>54</sup> R.64, 104.

<sup>55</sup> Defendant/Appellant's Brief to the Court of Appeals in *People v. Guerrero*, at 14.

<sup>56</sup> *Id.* at 15.

(EDDT) total score, Mr. Guerrero’s school psychologist recommended that he be identified as a student with an Emotional Disturbance.<sup>57</sup> In short, by the age of 17, Mr. Guerrero had experienced an extreme level of adversity. His mental health diagnoses and childhood trauma suggest a clear need for robust, ongoing services through adolescence and into emerging adulthood, which is common for clients and participants served by amici with similar histories. Raise the Age intended to recognize these factors and allow young people exactly like Mr. Guerrero to benefit from the services available in family court.<sup>58</sup>

**B. The court’s inquiry into amenability to services must be grounded in principles of adolescent development and evidence based juvenile justice practices.**

The Commission included in their final report a set of “evidence based principles” for juvenile justice practice, which include the key principles of risk, need, and responsivity.<sup>59</sup> In brief, these principles spell out that supervision and services should be proportional to a young person’s risk of re-offense; programming should be administered to youth based on need, which can change in response to interventions, external stresses, and the young person’s growth and development; and “services should be delivered in a manner to which youth will be most receptive.”<sup>60</sup>

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<sup>57</sup> R.80.

<sup>58</sup> N.Y. Assembly Debate of 2017, at 92-94.

<sup>59</sup> Commission Report, at 20.

<sup>60</sup> *Id.*



By maximizing cases that are removed to family court, the Legislature intended to provide 16- and 17- year olds opportunities to engage in programming designed to help them become productive members of the community.<sup>61</sup> Raise the Age explicitly amended the criminal procedure law to not only establish a youth part in every county, but also direct that family court judges preside over youth parts and “receive training in specialized areas, including, but not limited to, juvenile justice, adolescent development, custody and care of youths and effective treatment methods for reducing unlawful conduct by youths.” N.Y. Crim. Proc. Law § 722.10(1).

The purpose of these changes was to ensure that under Raise the Age, every child before the court is afforded an individualized inquiry into her risk, needs, and responsiveness to services.<sup>62</sup> This inquiry would necessarily account for the heightened needs of children with multiple ACEs and an understanding of adolescence as an especially critical period of development, which includes windows for growth and maturity that are different for every child, sensitive to

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<sup>61</sup> Mark W. Lipsey, *The Primary Factors that Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview*, *Victims & Offenders* 4, No. 2 (Apr. 2009), 124–47, <https://doi.org/10.1080/15564880802612573>; Jeffrey A. Butts, Gordon Bazemore, & Aundra Saa Meroe, *Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development*, Wash., DC: Coal. for Juvenile Justice (2010), [https://academicworks.cuny.edu/jj\\_pubs/380/](https://academicworks.cuny.edu/jj_pubs/380/).

<sup>62</sup> N.Y. Assembly Debate of 2017, at 18, Assembly Member Lentol explaining the role of the family court judge presiding over the youth part; *Id.* at 40, describing the wide range of factors that each judge must consider.

external factors, and the subject of ongoing study by experts in adolescent development.<sup>63</sup>

A full consideration of needs and responsiveness to services requires recognition that not all programs and interventions are equipped to meet young people's practical needs, and even effective programs do not work for every child every time. A young person's lack of engagement in a program is not a sure sign that they are "not amenable or would not benefit in any way" from services more broadly. Other explanations might be that the service's structure is too rigid, the support is too shallow, or the environment is not one where they feel safe, understood, or motivated.<sup>64</sup> A program might be well-matched to a young person's needs, but under-resourced with limited hours and staff capacity.<sup>65</sup> Finally, a young person might complete a court-mandated program but then experience setbacks including re-arrest. These setbacks could be caused by complex challenges including trauma, environmental stress, mental health or substance abuse, or negative peer influence; limited effectiveness of programs; or a simple lapse in impulse control. In Mr.

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<sup>63</sup> Ronald E. Dahl, *Adolescent Brain Development: A Period of Vulnerabilities and Opportunities*, Keynote Address, 1021 *Annals N.Y. Acad. Sci.* 1 (2004), at 22, <https://doi.org/10.1196/annals.1308.001>.

<sup>64</sup> Kristine Buffington, Carly B. Dierkhising & Shawn C. Marsh, *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency*, Nat'l Council of Juvenile and Family Court Judges (2010), at 8-13, [https://www.ncjfcj.org/wp-content/uploads/2012/02/trauma-bulletin\\_0.pdf](https://www.ncjfcj.org/wp-content/uploads/2012/02/trauma-bulletin_0.pdf).

<sup>65</sup> See, e.g., Aliya-Begum Jessa, Megan French-Marcelin, Jason Rodriguez & Darby Larkin, *Unlocking Potential: The Role of Community-Based Alternatives in Strengthening Public Safety in N.Y.S.*, New York ATI & Reentry Coal. (2024), at 1, <https://www.lac.org/resource/unlocking-potential-the-role-of-community-based-alternatives-in-strengthening-public-safety>.

Guerrero’s case, as the dissent in the Appellate Division recognized, at least at one point his mother declined services on his behalf. *People v. Guerrero*, 235 A.D.3d 1276, 1282-83 (4th Dep’t 2025) (Montour, J., dissenting). An assessment of a young person’s amenability to services must consider all the above factors rather than attributing failure to the individual and branding a young person incorrigible.

In Mr. Guerrero’s case, the Appellate Division determined that he was “not amenable to services” based solely on the finding that he had been provided services over a period of five years and yet continued to engage in criminal behavior. *Id.* at 1278. The court, however, never considered his heightened need for services based on overlapping mental health diagnoses and multiple traumatic experiences at a very young age. It made no robust inquiry into the depth and effectiveness of the services he had been provided, or his responsiveness to those services. It also gave little to no consideration to Mr. Guerrero’s ongoing development and potential to benefit from services as he grew and matured. Upholding the court’s determination would undermine the very purpose and promise of Raise the Age. As Assembly Member Lentol explained in the context of the need for increased resources for Raise the Age’s implementation, “[W]e don’t want to send them out on the street without getting the counseling and the treatment that they might need in order to transform their lives.”<sup>66</sup>

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<sup>66</sup> N.Y. Assembly Debate of 2017, at 70-71.

**C. Allowing access to confidential family court records in extraordinary circumstances determinations would undermine the family court’s confidentiality and rehabilitative focus.**

In family court proceedings, “[t]he problem for determination by the judge is not, has this boy or girl committed a specific wrong, but what is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.”<sup>67</sup> Research shows that approaching youth with punitive principles, such as the adult criminal system, increases recidivism.<sup>68</sup> By contrast, confidential proceedings in family court protect young people from the legal barriers to education, employment, housing, and other stabilizing support that a criminal record imposes. Relying on these confidential records in extraordinary circumstances proceedings undermines these crucial protections and is impermissible under Family Court Act § 381.2(1).<sup>69</sup>

Family Court Act § 381.2(1) establishes an unequivocal rule that “neither the fact that a person was before the family court . . . nor any confession, admission or statement” from the proceeding is admissible as evidence against the person or their

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<sup>67</sup> Julian W. Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104, 119–20 (1909)

<sup>68</sup> Shari Miller-Johnson & Joel Rosch, *Juvenile or Adult Court: Research on Future Offending*, Center for Child and Family Policy, Duke Univ. 21 (last visited Sept. 25, 2025), [https://evidence2impact.psu.edu/wp-content/uploads/2023/05/s\\_ncfis03c04.pdf#:~:text=Comparable%20youth%20in%20the%20New%20York%20adult,to%20be%20rearrested%20for%20felony%20property%20crimes.](https://evidence2impact.psu.edu/wp-content/uploads/2023/05/s_ncfis03c04.pdf#:~:text=Comparable%20youth%20in%20the%20New%20York%20adult,to%20be%20rearrested%20for%20felony%20property%20crimes.)

<sup>69</sup> Riya S. Shah & Jean Stout, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records*, Juvenile L. Ctr. (2016), [https://jlc.org/sites/default/files/publication\\_pdfs/Future%20Interrupted%20-%20final%20for%20web\\_0.pdf](https://jlc.org/sites/default/files/publication_pdfs/Future%20Interrupted%20-%20final%20for%20web_0.pdf).

interest. Indeed, this Court has held that “[a]s a rule, a juvenile delinquency adjudication cannot be used against the juvenile in any other court for any other purpose.” *Green v. Montgomery*, 95 N.Y.2d 693, 697 (2001); *see also People v. Campbell*, 98 A.D.3d 5, 12 (2d Dep’t 2012). Since Raise the Age was implemented, trial courts in New York State have repeatedly held that courts cannot use an adolescent’s “juvenile delinquency history, as extensive as it may be, as a factor weighed against the removal of these cases to family court,” and that “FCA § 381.2 expressly prohibits the use of an [Adolescent Offender]’s juvenile delinquency history and records, including any past adjudications, past admissions, and statements to the court, against him or his interests in any other court.” *M.M.*, 64 Misc. 3d at 259, 269; *see also J.J.*, 2022 WL 842078, at \*3 (the People may not “in any way, use the AO’s juvenile delinquency history” in considering removal to family court); *M.R.*, 68 Misc. 3d at 1010 (same); *see also Aaron VV.*, 2025 WL 2664302, at \*4 (“People improperly submitted proof related to defendant’s juvenile delinquency history in support of the motion” opposing removal to family court.).

In Mr. Guerrero’s case, the trial court erroneously relied on family court history to support its finding of extraordinary circumstances. It allowed the substance of Mr. Guerrero’s family court history to be introduced,<sup>70</sup> and the Appellate Division affirmed the trial court’s extraordinary circumstances finding in

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<sup>70</sup> R.37.

part on the basis of this evidence, citing *People v. Gray*, 84 N.Y.2d 709, 712 (1995) and *People v. Coggins*, 198 A.D.3d 1297, 1300 (4th Dep’t 2021). *Guerrero*, 235 A.D.3d at 1278. However, the courts in both *Gray* and *Coggins* simply permitted limited use of prior bad acts for impeachment purposes. *Gray*, 84 N.Y.2d at 711; *Coggins*, 198 A.D.3d at 1300. Here, the trial court went much further, permitting the People to introduce evidence of Mr. Guerrero’s family court history for purposes of preventing removal to family court. R. 37. And in any event, this Court in *Gray* expressly limited the use of such evidence to “the illegal or immoral acts underlying such adjudications.” *Gray*, 84 N.Y.2d at 712. Notably, here, the prosecution did not present *any* evidence of the acts underlying Mr. Guerrero’s past family court adjudications, but rather offered, and the trial court relied on, evidence concerning Mr. Guerrero’s juvenile delinquency history itself—the extent of his family court involvement, the services he received, and his success or failure on probation—to justify its finding that he would not be amenable to services.<sup>71</sup> This is the precise conduct the Family Court Act expressly prohibits. Family Court Act § 381.2(1); *Green*, 95 N.Y.2d at 697.

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<sup>71</sup> R.39-41.

#### **IV. Adopting a broad definition of “extraordinary circumstances” would negatively impact public safety and widen racial disparity.**

Mounting research that served as a basis for Raise the Age demonstrated that age-appropriate treatment for youth reduces recidivism, improves community outcomes, and provides opportunities for youth to move forward with their lives.<sup>72</sup> Ensuring that juvenile cases are retained in adult criminal court only under truly extraordinary circumstances allows the system to continue to serve not just the young person, but the broader public interest. A recent analysis of crime data in New York City found that youth under 18 are responsible for less violence in New York City today than in the years before Raise the Age was enacted.<sup>73</sup>

##### **A. Prosecuting more 16- and 17-year-olds as adults would exacerbate racial disparities that Raise the Age intended to address.**

There is extensive evidence that youth of color are disproportionately impacted by the criminal justice system. Black youth, for example, are more likely to be arrested than their white peers and less likely to be diverted from court.<sup>74</sup> The Commission reported that “[y]oung men of color are substantially overrepresented among youth who are arrested at age 16 or 17 and who end up incarcerated as a

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<sup>72</sup> Commission Report, at 1.

<sup>73</sup> Jeffrey A. Butts & Gina Moreno, *Minor Role IV: Violent Crime More of an Adult Problem Today*, John Jay Coll. of Crim. Justice City Univ. of N.Y., Research & Evaluation Ctr. (Aug. 25, 2025), <https://johnjayrec.nyc/2025/08/25/databit202502/>.

<sup>74</sup> Richard Mendel, *Diversion: A Hidden Key to Combating Racial and Ethnic Disparities in Juvenile Justice*, The Sentencing Project (2022), at 11-12, <https://www.sentencingproject.org/app/uploads/2022/10/Diversion-A-Hidden-Key-to-Combating-Racial-and-Ethnic-Disparities-in-Juvenile-Justice.pdf>.

result of the offense. Those impacts are felt not only by the young men themselves, but also by communities of color around the State” and cited this disparity as a critical reason to raise the age of adult prosecution.<sup>75</sup>

Raise the Age was a crucial step towards reducing entrenched disparities and strengthening public trust in the justice system by directing the vast majority of 16- and 17-year-olds who are arrested to be processed in family court, which emphasizes rehabilitation. Given the disproportionate representation of youth of color at every stage of the juvenile and criminal legal systems, research suggests that widening the definition of “extraordinary circumstances” will worsen racial disparity in removal decisions and perpetuate the harms Raise the Age was intended to reduce.<sup>76</sup>

**B. Limiting the stigma and civil consequences of adult criminal records promotes essential opportunities for youth.**

Youth facing adult prosecution carry criminal records and long-term collateral consequences that can undermine their progress towards becoming productive adults. This is true even before conviction, as pending cases in adult criminal court are public, unlike in family court where cases are confidential. Amici know from experience that if a young person is employed at the time of arrest, their employment is at risk as soon as they are taken into custody—regardless of whether the arrest results in a conviction.

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<sup>75</sup> Commission Report, at 2.

<sup>76</sup> See generally *Race and Juvenile Justice*, Nat’l Ass’n Crim. Def. & Civ. Rts. L. (Nov. 29, 2022), <https://www.nacdl.org/Content/Race-and-Juvenile-Justice>.



The civil consequences of adult criminal records can drastically impact a young person's ability to secure or maintain housing, employment, public benefits, education, voting, health care, and immigration status.<sup>77</sup> While Youthful Offender status is granted in some cases, it is usually at the judge's discretion and subject to eligibility restrictions based on charge and prior record.<sup>78</sup> A youth's record in adult criminal court will remain public until sealed under CPL § 160.57 (Clean Slate), which requires a minimum waiting period of 3 years for a misdemeanor and 8 years for a felony.<sup>79</sup> Thus, many youth exiting adult courts face significant stigma and barriers to reintegration—conditions that only heighten the risk of recidivism. In contrast, confidential family court records will not show up in background checks.

Amici collectively have represented and provided employment-related services to tens of thousands of people, many of whom received adult convictions while still in adolescence, who have faced discrimination based on arrest and conviction records. Adult criminal records prevent young people from achieving their goals by imposing far-reaching consequences on people for mistakes made as children. Amici's clients have repeatedly been denied jobs, promotions, and vocational licenses, leaving them to feel that they are persistently judged for their

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<sup>77</sup> Ashley Nellis, *Addressing the Collateral Consequences of Convictions for Young Offenders*, The Champion (Aug. 2011).

<sup>78</sup> N.Y. Crim. Proc. Law § 720.10(1-2).

<sup>79</sup> N.Y. Crim. Proc. Law §§ 160.57(1)(b)(i), (1)(b)(ii).

records rather than recognized as the people they have become. The Legislature recognized this and intended to remedy it through Raise the Age.<sup>80</sup>

### **CONCLUSION**

Treating 16- and 17-year-olds as youth in the juvenile justice system has significant benefits for community safety, public trust, racial equity, and long-term economic and social health.<sup>81</sup> Understanding this, the Legislature enacted Raise the Age with the express purpose of ensuring that most 16- and 17-year-olds arraigned in youth parts of adult court would have their cases promptly transferred to family court. Upholding the lower court's interpretation of extraordinary circumstances would eviscerate the protections of Raise the Age and harm the communities amici serve.

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<sup>80</sup> N.Y. Assembly Debate of 2017, at 114 (“The sealing of records...is the single greatest chance that we can give young offenders to recover from their mistakes and move on with their lives as independent, law-abiding citizens.”).

<sup>81</sup> Commission Report, at 19-20.

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## CERTIFICATION OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR § 500.13(c)(1) that the foregoing brief was prepared on a computer. A proportional spaced typeface was used as follows:

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Date: October 1, 2025

  
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