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1789

RAISE THE AGE
GENERAL ORDER NO: 3.8.06

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DISTRIBUTION: SWORN PERSONNEL
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The State Fiscal Year 2017-18 Budget included legislation to raise the age of criminal responsibility to 18 years of age. This newly enacted legislation includes statutory amendments that a) create a new Adolescent Offender (AO) classification; b) establish a new Youth Part in the Superior Court; and c) require misdemeanor cases, with the exception of Vehicle and Traffic Law (VTL) misdemeanors, to be heard in Family Court. ***All statutory amendments pertaining to 16-year-olds take effect October 1, 2018. Outlined below and in the attached chart is a summary of how the new legislation will impact law enforcement officers when taking 16-year-old offenders into custody.***

16- Year-Old Charged With A Misdemeanor, Traffic Infraction, Or Violation

Misdemeanors: (Other than VTL Misdemeanors and Misdemeanors accompanied with a Felony Charge) Upon the relevant effective dates, a 16-year-old arrested for a misdemeanor will be considered a juvenile delinquent and the case heard in Family Court. Law enforcement should utilize the same arrest procedures for juvenile delinquents when processing 16-year-olds charged with a qualifying misdemeanor and should use the juvenile delinquent custody determinations set forth in Family Court Act 305.2. If, pursuant to Family Court Act 305.2(4)(b), law enforcement takes the child directly to family court and court is not in session, the statute now requires the youth be taken to the most accessible magistrate (judge), if any, designated by the Appellate Division of the Supreme Court. A 16-year-old may **not** be housed with adults in these circumstances.

VTL Misdemeanors: If a custodial arrest is made, a 16-year-old charged with a VTL misdemeanor should continue to be processed as an adult since the case will be heard in adult criminal/local court.

Traffic Infractions and Violations: Like VTL misdemeanors, the process will remain the same for any 16-year-old charged with a traffic infraction or a violation. The case will be heard in traffic court/local court respectfully. Note that, unlike persons 15 years of age or less, 16-year-olds may still be charged with violations and traffic infractions.

16-Year-Old Charged With Felonies - Adolescent Offenders (AOs)

Violent Felonies and Non-Violent Felonies: A 16-year-old charged with a felony is an AO. AOs will be arraigned in the newly established Youth Part of the Superior Court, or when Court is not

in session they must be brought before the designated magistrate (judge) for arraignment. The Criminal Procedure Law authorizes a police officer to issue appearance tickets, instead of a physical arrest, when a person is charged with most E felonies as designated in CPL § 150.20.

Misdemeanor Charges Accompanied with a Felony: A 16-year-old charged with a misdemeanor and a felony, alleged to have been committed as a part of the same criminal transaction, will be considered an AO and processed as an adult prior to arraignment in the Youth Part.

13- To 15-Year-Olds Juvenile Delinquents (JD):

The processing and custody determination of juvenile delinquents ages 13 to 15 will generally remain the same. 16-year-olds charged with a misdemeanor will be processed as JD. However, as mentioned previously, in custodial arrest situations where Family Court is not in session, the statute now requires law enforcement to take the child before the most accessible magistrate.

Juvenile Offenders (JO): The processing of JO's, will remain the same for youths ages 13 to 15 who commit certain qualifying serious crimes. However, all 13 to 15-year-olds charged as JOs will now have their cases adjudicated in the Youth Part - when the Youth Part is not in session they must be brought before a designated magistrate for arraignment.

Arrest Procedures

Arrest on a Warrant: CPL § 120.30 has been amended to add that an AO or JO arrested on a warrant issued from the Youth Part must be brought before the Youth Part of the Superior Court in which the warrant is returnable, provided that court is in session. If the Youth Part is not in session, the officer must bring the individual before the designated magistrate for arraignment purposes.

Fingerprinting:

Traffic Infractions, Violations, and Misdemeanors Similar to adults, 16-year-olds charged with traffic infractions and violations cannot be fingerprinted.

Misdemeanors (other than VTL misdemeanors) will no longer be printable offenses for 16-year-olds since they will be considered JDs. As such, any attempts to submit fingerprints via Livescan for these non-printable offenses will be rejected.

Felonies or Fingerprintable VTL Misdemeanors 16-year-old charged with a felony or a VTL printable misdemeanor should still be fingerprinted pursuant to CPL § 160.10(1).

Parental Notification:

A parent or other person legally responsible for the 16-year-old's care must be immediately notified that the individual has been arrested; and the location of the facility where he or she is being detained.

Questioning: If questioning of a 16-year-old is to occur, it must be held in a facility suitable for the questioning of a juvenile pursuant to the requirements of 22 N.Y.C.R.R. 205.20. The youth may also be questioned for a reasonable period of time at his or her residence, upon the consent of a parent or other legally responsible person. Miranda rights are always required during a custodial interrogation, regardless of suspect age. If present during questioning, a parent or other person legally responsible for the care of the juvenile must also be advised of the Miranda warnings.

Law Enforcement Pre-Arrest Processing of a 16- Year-Old

Effective October 1, 2018 for 16-year-olds

	Traffic Violation	Violation	Vehicle and Traffic Law Misdemeanor	Misdemeanor (Except VTL Misdemeanors)	Felony (Violent and Non-violent)
Holding Location	Child Designated Questioning Facility ¹ or Juvenile Detention Facility ²	Child Designated Questioning Facility ¹			
Fingerprintable	NO	NO	YES	NO	YES
Parental Notification of Arrest and Location Held	YES	YES	YES	YES	YES
Questioning Location	Child Designated Questioning Facility ³	Child Designated Questioning Facility ³			
Mandated Video Recording	NO	NO	NO	NO	For Qualifying Offenses ⁴
Court of Arraignment	Adult Criminal/Local Court	Adult Criminal/Local Court	Adult Criminal/Local Court	Family Court	Youth Part of Superior Court

*Starting October 1, 2018 all 16-year-olds will be processed in CFSU and will not be brought to Central Booking or CIU for interview

*16-year-olds now need to be listed as respondents on arrest paperwork instead of defendants

*Criminal Court Youth Part (Judge Rivera, Family Court) convenes at 1400 daily in Family Court

*Arrests of 16-year-olds for felony offenses require the notification of a magistrate (judge). A call list and schedule will be available in CFSU

*A listing of the proper arrest paperwork needed for all juvenile arrests will be available in CFSU and normal juvenile arrest procedures should be utilized

*All authorized fingerprinting of 16-year-olds will now be conducted in the RIC room adjacent with CFSU/FIU

*The CFSU general orders are in the process of being updated to include this new legislation

[Additional Information](#)