CHAPTER 38

RIGHTS OF YOUTH IN PRISON*

A. Introduction

This Chapter discusses the rights and treatment of young people in state and federal prison or juvenile detention facilities.

This Chapter is divided into four parts. **Part A**—the Introduction you are reading now—will give a brief overview of the juvenile criminal system (often called the "juvenile delinquency system"). **Part B** will give an overview of the rules the federal government must follow when it tries to convict young people of crimes and what you should do if the government does not follow those rules. **Part C** will give an overview of the rules the New York State government must follow when it tries to convict young people of crimes and what you should do if the government does not follow those rules.

When a government incarcerates a young person, it has to obey certain rules to make sure that their rights are protected. **Part D** will talk about these rules and rights in both federal and New York State facilities. If you believe your rights are being violated, you can file a special complaint (a type of lawsuit): either a Section 1983 claim (when filed against a state government)[1] or a *Bivens* claim (when filed against the federal government).[2] If you convince a court that you are not being treated properly, the court may issue an "injunction," which is an order that will force your caretakers to provide you with better treatment. At the end of this Chapter, **Appendix A** includes a glossary of common legal terms that are helpful to know.

1. Are You a "Juvenile"?

The first thing you need to know is whether you were tried as a "juvenile" in your criminal case. "Majority age" (the age when you legally become an adult) will depend on the specific rules of the state in which you were convicted. In many states, the law says you are an adult when you are seventeen or eighteen. If you were accused of committing a crime before you reached majority age, then you were likely tried as a juvenile. Even if you were tried as an adult, the law may give you certain young people protections, such as placement in a "juvenile facility." This Chapter will provide you with information about these legal protections.

If you were accused of breaking a federal law before you turned eighteen, then you were likely tried as a juvenile. However, there are some exceptions to this, which are discussed in this Chapter.

If you were accused of breaking a state law, then you need to know the particular laws of your state on "juveniles." In some states, you may be considered an adult before you reach eighteen, depending on the type of offense and your age. For example, in North Carolina, you are considered an adult if you commit a crime when you are sixteen or older. Similarly, you are considered an adult if you commit a crime when you are seventeen or older in Georgia, Texas, and Wisconsin.[3] In all other states, you are generally considered a juvenile for crimes you committed before you turned eighteen

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[1] For a detailed description of a § 1983 claim, see *JLM*, Chapter 16, "Using 42 U.S.C. § 1983 to Obtain Relief from Violations of Federal Law."

[2] The *Bivens* cause of action, which generally has the same standards as a § 1983 claim, was established by the Supreme Court in Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 397, 91 S. Ct. 1999, 2005, 29 L. Ed. 2d 619, 627 (1971).

[3] *See* Anne Teigen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT'L CONF. OF STATE LEGISLATURES (Apr. 8, 2021), *available at* https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx (last visited Mar. 27, 2024). You should also note that for status offenses, abuse, neglect, and dependency matters, you may be tried as a juvenile in many states. *See* CHARLES PUZZANCHERA ET AL., NAT'L CTR. FOR JUVENILE JUST., YOUTH AND THE JUVENILE JUSTICE SYSTEM: 2022 NATIONAL REPORT 92 (2022), *available at* https://ojjdp.ojp.gov/publications/2022-national-report.pdf (last visited Mar. 27, 2024).

unless you are moved to adult court for a special reason. This Chapter will discuss some of these special reasons below.

2. Why are Young People Treated Differently than Adults?

Laws treat young people differently from adults for several reasons. Because young people are less mature and experienced than adults, young people are less able to consider the consequences of their actions and understand why their actions were wrong than adults.[4] Young people are also more likely to be influenced by their peers.[5] In addition, young people are generally thought to be less dangerous to the public than adults. Based on the developmental differences between young people and adults, the government thinks that young people can be taught why the crimes they committed are wrong and learn to follow the law in the future. Therefore, the goals of the "juvenile justice system" are to hold you responsible for your actions and provide you with treatment and education.[6]

3. Differences between the Adult Criminal System and the Juvenile Delinquency System

First, the adult criminal justice system is punitive, which means it focuses on punishing people for breaking the law. Adult offenders are put in prison as punishment for their actions and as a way to protect the community from their behavior. The juvenile delinquency system is usually "rehabilitative," which means that it focuses on teaching young people who commit criminal offenses to follow the law. This means the juvenile system focuses on "fixing" criminal behavior and improving a young person's life.[7] Some states, however, also include punishment as a goal.

Second, the adult criminal justice system focuses on the crime, not the offender. For example, in adult criminal cases, the only question is whether you committed the crime. If a jury finds that you committed the crime, then you will be punished. The juvenile system, however, places greater emphasis on the offender. The court is interested in whether you committed the crime, why you committed the crime, and what can be done to prevent you from committing a crime in the future.

Third, young people sometimes have different constitutional rights than adults. Defendants in the adult criminal system have certain constitutional rights, such as a right to a jury trial and to a lawyer.

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[4] NAT'L RSCH. COUNCIL OF THE NAT'L ACADS., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 95 (Richard J. Bonnie et al. eds., 2013).

[5] NAT'L RSCH. COUNCIL OF THE NAT'L ACADS., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 94, 105–108 (Richard J. Bonnie et al. eds., 2013).

[6] *See* Roper v. Simmons, 543 U.S. 551, 569, 125 S. Ct. 1183, 1196, 161 L. Ed. 2d 1, 21–22 (2005) (discussing general differences between youth and adult offenders that, when taken together, demonstrate how juvenile offenders cannot reliably be classified as among the worst offenders); *see also* Thompson v. Oklahoma, 487 U.S. 815, 835, 108 S. Ct. 2687, 2698, 101 L. Ed. 2d 702, 718 (1988) (holding that the differences between youth and adult offenders indicate that less culpability should attach to a crime committed by a young person than to a comparable crime committed by an adult). *But see*, *e.g.*, Mendez-Alcaraz v. Gonzales, 464 F.3d 842, 843 (9th Cir. 2006) (declining to consider the defendant's age at the time of the offense in determining his status under a federal law requiring deportation for the commission of certain offenses).

[7] *See* Kent v. United States, 383 U.S. 541, 554, 86 S. Ct. 1045, 1054, 16 L. Ed. 2d 84, 93–94 (1966) (describing the role of the Juvenile Court); *see also* Enrico Pagnanelli, Note, *Children as Adults: The Transfer of Juveniles to Adult Courts and the Potential Impact of* Roper v. Simmons, 44 AM. CRIM. L. REV. 175, 175–176 (2007).

Young people do not have all of the same constitutional rights as adults.[8] For example, young people do not always have a right to a speedy trial[9] or a right to a jury trial.[10]

Fourth, in the adult criminal system, all proceedings are open to the public unless the judge orders that they are closed for some special reason. A proceeding is an appearance in court where you, the judge, and lawyers are all present. Court proceedings include the trial and events before the trial. However, in most states' juvenile delinquent systems, proceedings are confidential. This means the courtrooms are not open to the public and the full names of accused young people are kept private. Also, the judge may order a young person's record to be sealed. This means that your "juvenile offenses" will not be a part of your permanent criminal record.[11]

Fifth, when you are found guilty as an adult in the adult criminal system, your sentence is based on your crime and criminal record. You cannot be forced to serve more time than the maximum punishment decided by the judge unless you commit another crime.

However, when you are found guilty as a young person in the juvenile delinquency system, you are given a "disposition" instead of a sentence. A disposition is the time you must serve at a facility or in a program for the crime. A disposition is based on many things, including why you committed the crime, how serious the crime was, and whether you have committed crimes before. Dispositions are "indeterminate," meaning the exact amount of time you must serve may not be decided all at once and is not based on the specific crime you are convicted for. Instead, it depends on your "rate of rehabilitation," which means the amount of time the court thinks you need to correct your behavior. The court can extend the amount of time you have to serve if the judge thinks that you have not corrected your behavior at the end of your disposition.

Young people who commit criminal offenses are not always sent to detention facilities. There are other programs, often run by juvenile courts, called "alternatives to incarceration" or "ATIs," as well as community- and residential-based programs, where young people may be sent for their disposition. You will learn more about these later in this Chapter.

When you are charged with a crime, there are rules that the government and its lawyers (the prosecutors) must follow. These rules create rights and protections for people who have been accused of crimes (the defendants). If the government breaks these rules and violates your rights, then you can file an appeal and ask a higher court (sometimes called an appellate court) to review your conviction based on the specific mistake the government made. Part B of this Chapter explains the rules that the government must follow when it accuses you of breaking a federal law. Part C of this Chapter explains the rules that the government must follow when it accuses you of breaking a New York State law.

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[8] *See In re* Gault, 387 U.S. 1, 14, 31–58, 87 S. Ct. 1428, 1436, 1445–1460, 18 L. Ed. 2d 527, 538, 548–563 (1967) (discussing the basic due process rights young people have in court), *overruled on other grounds by* Allen v. Illinois, 478 U.S. 364, 372–373, 106 S. Ct. 2988, 92 L.Ed.2d 296 (1986); O'Brien v. Marshall, 453 F.3d 13, 17–18 (1st Cir. 2006) (holding that the 5th Amendment is not applicable in juvenile court transfer hearings).

[9] Sadler v. Sullivan, 748 F.2d 820, 827 (3d Cir. 1984) (holding that a young person does not have a constitutional right to a speedy trial until he loses the protections of the juvenile court system and becomes subject to penalties faced by adults); United States v. Hill, 538 F.2d 1072, 1077 (4th Cir. 1976) (young people do not have a 6th Amendment claim for right to speedy trial).

[10] *See* United States v. Torres, 500 F.2d 944, 948 (2d Cir. 1974) (finding no constitutional right to jury trial); Cotton v. United States, 446 F.2d 107, 110 (8th Cir. 1971) (same); United States v. King, 482 F.2d 454, 455—456 (6th Cir. 1973) (same); United States v. James, 464 F.2d 1228, 1230 (9th Cir. 1972) (same).

[11] However, it may be possible for "juvenile records" to be accessed for future use under limited circumstances. *See*, *e.g.*, United States v. Washington, 706 F.3d 1215, 1219 (10th Cir. 2012) (holding that under state law, prior juvenile adjudications may be used for sentencing and other purposes); United States v. Carney, 106 F.3d 315, 317–318 (10th Cir. 1997) (holding that under state law, a federal court can use a defendant's sealed juvenile records when sentencing him as an adult for manslaughter). Moreover, in New York State, family court proceedings are open to the public and you must make a motion to seal court records after a finding of delinquency if you want your records to be sealed. N.Y. FAM. CT. §375.2 (McKinney 2021).

B. The Federal System

1. Procedure in the Federal System

The federal government must follow the rules in a law called the Juvenile Justice and Delinquency Prevention Act (or "JJDPA") in cases involving juvenile defendants. You can find the JJDPA rules in Title 18 of the United States Code, Sections 5031–5042. If you are considered a juvenile and the government prosecutor did not follow one of the JJDPA rules in your case, you may be able to appeal your conviction. If your appeal succeeds, you may have your conviction vacated (reversed).[12] Read the rules below and think about whether the government followed them in your case. If you think the government broke any of the JJDPA rules, you should tell your lawyer.

According to the JJDPA, a "juvenile" is:

(1) Anyone who is less than eighteen years old; or
(2) Anyone who is less than twenty-one and who is accused of committing an act of "juvenile delinquency" before he was eighteen.[13]

If you fit one of these two definitions of a "juvenile," then the JJDPA probably applies to your case. The JJDPA does contain some complicated exceptions if you are in New York, which are explained in Section C(1) below.

The JJDPA contains two sets of rules the government must follow. The first covers the "certification" of your case. The second covers "determining the status" of your case.

The first thing the federal government must do when prosecuting a juvenile is "certify" the case. This means that the prosecutor working for the government must provide a document[14] to the court that states that:

(1) There is a substantial "federal interest" in the case; and
(2) The state where the crime happened does not have jurisdiction or refuses to exercise jurisdiction; or
(3) The state with jurisdiction does not have adequate programs or services for juveniles; or
(4) The offense charged is a violent felony, a drug trafficking or importation offense, or a firearms offense.[15]

If you live in New York and are on trial in a federal court for a federal crime, the first thing the government must do is explain why there is a "federal interest" in your case. This means that the government must explain why your crime is dangerous to people in your home state and to people in other states, too. If you were accused of selling drugs in New York, for example, the government would probably say that there is a federal interest in prosecuting your case because the drugs you sold might end up in another state, where they could hurt other people. It is not always clear why some things are considered federal interests and others are not.

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[12] United States v. Juvenile Male, 595 F.3d 885, 906 (9th Cir. 2010), (instructing district court to vacate defendant's convictions if a violation of JJDPA procedure was found); United States v. Chambers, 944 F.2d 1253, 1260–1261 (6th Cir. 1991), (vacating defendants' convictions where the Attorney General did not complete the JJDPA procedures until after defendants were convicted), *superseded by statute on other grounds as recognized in* United States v. Avery, 128 F.3d 966, 972 (6th Cir. 1997).

[13] *See* 18 U.S.C. § 5031.

[14] These documents do not have to be detailed. An example of a proper certification is a piece of paper saying: "Comes now Joseph L. Famularo, United States Attorney for the Eastern District of Kentucky, who, after investigation, and pursuant to the provisions of Title 18, United States Code, § 5032, hereby certifies to this court that the offenses for which this juvenile, [John Doe], is charged herein by information, include a crime of violence, that is a felony under the laws of the United States, and that there is a substantial federal interest in the case and the offense to warrant the exercise of federal jurisdiction." United States v. Doe, 226 F.3d 672, 677 n.2 (6th Cir. 2000).

[15] This fourth condition is more specific in the statute: "[T]he offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. [§] 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. [§§] 952(a), 953, 955, 959, 960(b)(1)(2)(3)), § 922(x) or section 924(b), (g), or (h) of [Title 18 U.S.C.], and that there is a substantial Federal interest . . . to warrant the exercise of Federal jurisdiction." 18 U.S.C. § 5032.

Next, the government must explain why the federal court should hear your case instead of the state court. The government can do this in a few different ways. It can say that the state court does not want to hear your case, that the state does not offer the programs and services you will need if you are convicted (like a juvenile detention center), or that your crime involved violence, drugs, or guns. The federal government does not need to do much to establish a federal interest in your case as long as it meets the minimal requirements of the JJDPA.

Unfortunately, it is very hard to challenge certification mistakes. The majority of federal circuit courts believe that as long as there was "substantial" good faith compliance with the certification requirements (the prosecutor did his best to follow the rules), you may not appeal certification mistakes. This means that most courts will not review certification mistakes unless the government made no effort at all to comply with the JJDPA's certification requirements.[16]

You will have the best chance of challenging certification if your case was brought in the Fourth Circuit.[17] The Fourth Circuit includes all federal courts in Maryland, North Carolina, South Carolina, Virginia, and West Virginia. Although all federal courts generally follow the same rules, the federal courts in these states are especially willing to listen to complaints about certification from incarcerated youth. The courts in other circuits, which cover other regions of the United States, have not and probably will not hear certification appeals.[18] Therefore, if you think the government did not follow the rules in certifying your case and you are in one of the states in the Fourth Circuit, then you should immediately tell your lawyer about the mistake. If you think there was a certification mistake and you are not in one of those states, then you should still check with your lawyer. However, you probably will not be able to challenge your conviction on certification grounds unless the government did not even try to follow the requirements.

The second set of rules the federal government must follow under the JJDPA relates to "determining status." Your "status" refers to whether you are a juvenile or an adult. The government will usually consider you a juvenile if you committed the crime before your eighteenth birthday, but there are some complicated rules on this. "Determining your status" means applying the rules to determine whether you will be tried as a juvenile or an adult.

After the federal government has certified your case, there are four things that can happen:

(1) You may be tried as a juvenile;
(2) You may agree to be tried as an adult;
(3) The law may require that you be tried as an adult; or
(4) The judge may decide to try you as an adult, even if the law does not require it.[19]

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[16] *See* United States v. Wong, 40 F.3d 1347, 1369 (2d Cir. 1994) (stating that the government need only make a good faith effort to provide documentation). *But see* Impounded (Juvenile I.H.), 120 F.3d 457, 461 (3d Cir. 1997) (concluding that the JJDPA mandates strict and literal compliance with the certification rules).

[17] United States v. T.M., 413 F.3d 420, 424 (4th Cir. 2005) ("[T]he Fourth Circuit is the only circuit that requires a more searching review of the government's assertions in its § 5032 certifications."); *see, e.g.*, United States v. C.A.M., 251 F. App'x 194, 195 (4th Cir. 2007) (*unpublished*) (ordering of transfer vacated and remanded).

[18] *See, e.g.*, United States v. Female Juvenile A.F.S., 377 F.3d 27, 32 (1st Cir. 2004) (agreeing with other circuits that the United States Attorney's "certification of a 'substantial federal interest' is an act of prosecutorial discretion that is shielded from judicial review" (citing United States v. Smith, 178 F.3d 22, 25 (1st Cir. 1999))); United States v. F.S.J., 265 F.3d 764, 771 (9th Cir. 2001) (holding that "the United States Attorney's certification of a 'substantial federal interest' under § 5032 is not subject to judicial review except for such formalities as timeliness and regularity (e.g., signed by the proper official) and for allegations of unconstitutional prosecutorial misconduct"); United States v. Doe, 226 F.3d 672, 678 (6th Cir. 2000) (holding that "Congress did not intend that the Attorney General's certification of the existence of a substantial federal interest be subject to judicial review for the sufficiency of the underlying facts"); United States v. Jarrett, 133 F.3d 519, 538 (7th Cir. 1998) ("We agree with the Government, as well as with the majority of courts to consider this question, that we cannot substantively review the Attorney General's certification of a substantial federal interest."); United States v. Juvenile Male J.A.J., 134 F.3d 905, 909 (8th Cir. 1998) (holding that certification of a substantial federal interest is an unreviewable act of prosecutorial discretion).

[19] Additionally, under some state laws, after the entry of a guilty plea, a young person may be sentenced as either a juvenile or an adult. *See, e.g.*, Gonzales v. Tafoya, 515 F.3d 1097, 1107, 1128 (10th Cir. 2008) (where a 14-year-old was sentenced as an adult under New Mexico state law after pleading guilty to murder).

You should know which of these options the government followed in your case. The rest of this Section will explain the rules the government must obey regardless of how you are tried. As you read, if you see a rule that you think the government did not obey in your case, then you should tell your lawyer.

2. Being Tried as a Juvenile in the Federal System[20]

(a) Rules That Apply Before Your Hearing

Generally, youth offenders must be brought to trial within thirty days and can only be held in certain types of places while waiting for trial.[21] This "speedy trial" rule means that your trial must begin within thirty days of the date you were arrested.[22] If you are not brought to trial within thirty days, your case might be dismissed.[23]

However, courts have restricted appeals that are based on trials not happening within thirty days of arrest, and it may be difficult to bring this type of claim successfully. For instance, many courts have said that if you caused the delay or if you agreed to the delay, then you gave up your right to a speedy trial. A delay might also be okay if the court believes it is in the "interest of justice."[24] Additionally, your case will not be dismissed if the delay was only because of the court's busy schedule. In that situation, a judge with many cases to hear is allowed to hear your case after the thirty-day deadline. In addition, the time taken for transfer hearings does not count toward the thirty days. Therefore, if the trial does not start until thirty-five days after your arrest because the transfer hearing took five days, those five days do not count and your speedy trial right has not been violated.[25]

(b) Rules That Apply During Your Hearing

If you are tried as a juvenile, then you are given a "delinquency hearing" instead of a formal trial. In a juvenile delinquency hearing, the court must decide if you are "delinquent." "Delinquent" is a word used to describe individuals younger than eighteen years old who have broken a United States

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[20] For a discussion of changing views regarding juvenile delinquency and the impact this has had on the treatment of young people in the federal system, see Juan A. Arteaga, Note, *Juvenile (In)Justice: Congressional Attempts to Abrogate the Procedural Rights of Juvenile Defendants*, 102 COLUM. L. REV. 1051 (2002).

[21] 18 U.S.C. §§ 5035, 5036 (stating that while waiting for trial, young people can only be detained in a juvenile facility or other appropriate place, not with adult criminals; young people must be tried within 30 days of detention, unless the "interest of justice" creates an exception; courts cannot use the excuse of having too many cases to hear); *see* United States v. Female Juvenile, A.F.S., 377 F.3d 27, 34 (1st Cir. 2004) (recognizing that the 30-day speedy trial period begins to run on the date a juvenile is taken into federal custody and continues to run, subject to certain exceptions, until the delinquent is "brought to trial"); United States v. Baker, 10 F.3d 1374, 1397 (9th Cir. 1993) (holding that extensions of time applied for by defendant are excluded from calculation of delay and that delay in this particular case is acceptable in the interest of justice), *overturned on other grounds by* United States v. Nordby, 225 F.3d 1053 (9th Cir. 2000); *see also* United States v. Juvenile Male, No. 96–1270, 1996 U.S. App. LEXIS 28663, at *6 (2d Cir. Nov. 1, 1996) (*unpublished*) (holding that the time between the government's filing of a motion to transfer to adult status and the court's ruling on the motion is excluded from the 30-day requirement); United States v. Romulus, 949 F.2d 713, 716 (4th Cir. 1991) (finding that delay caused by defendant's misrepresentation of age does not violate speedy trial requirement).

[22] *See, e.g.*, United States v. Female Juvenile, A.F.S., 377 F.3d 27, 38 (1st Cir. 2004); United States v. Wong, 40 F.3d 1347, 1371 (2d Cir. 1994); *see also* United States v. Romulus, 949 F.2d 713, 716 (4th Cir. 1991) (quoting 18 U.S.C. § 5036 to illustrate the 30-day requirement).

[23] 18 U.S.C. § 5036.

[24] *See* United States v. Doe, 49 F.3d 859, 865–866 (2d Cir. 1995) (acknowledging that if a miscarriage of justice would result, the district judge may decline to follow the 30-day requirement and that this decision would be reviewable on appeal only for an abuse of discretion (citing United States v. Marrero, 705 F.2d 652, 656 n.6 (2d Cir. 1983))); United States v. Juvenile Male, 595 F.3d 885, 896 (9th Cir. 2010); *see also* United States v. Doe, 571 F. App'x 656, 659 (10th Cir. 2014) (*unpublished*).

[25] *See, e.g.*, United States v. Wong, 40 F.3d 1347, 1371 (2d Cir. 1994) (holding that the speedy trial rule was not violated when the government filed a motion on the 30th day of detention); United States v. Romulus, 949 F.2d 713, 716 (4th Cir. 1991) (finding that the delay between the government's filing of a motion to transfer and the court's approval of the motion was properly excluded from the speedy trial rule in the interest of justice).

law, which would be a crime if committed by an adult.[26] Note that there are fewer due process (constitutional) protections in a delinquency hearing (described in Section A(4) of this Chapter) than in the adult system.[27] However, there are a number of rules that the government must follow.

First, the hearing may not be open to the public.[28] Second, there will not be a jury at your hearing. The judge will make the decision.

(c) Rules That Apply at the End of Your Hearing

After deciding whether you are "delinquent" (whether you broke the law), the judge gives the "disposition," which means the final status of the case. The judge has three choices: (1) give you probation, which is a period of release outside of prison supervised by a probation officer; (2) order you to be placed in a correctional facility, which may also include an order of a period of supervision after detention in the facility; or (3) suspend the findings of juvenile delinquency (decide not to impose any punishment). The judge may also order you to pay money to the victim to make up for the crime.[29]

Dispositions may be different depending on your age. If you are under eighteen years old, then you may be given probation or put in a facility until you are twenty-one years old. If you are between eighteen and twenty-one years old, then you may get probation for up to three years or get put in prison for up to five years.[30]

(d) Rules That Apply After Your Hearing

First, no matter what happened, the government must seal all records after your hearing.[31] This means that people who were not involved in your case will not be able to see the records.[32]

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[26] 18 U.S.C. § 5031.

[27] There are fewer ways for a young person to claim that the procedure of a juvenile court violates his constitutional rights, but there are certain due process rights that apply even in juvenile court. For a discussion of the basic due process rights that young people have in court, see *In re* Gault, 387 U.S. 1, 31–58, 87 S. Ct. 1428, 1445–1460, 18 L. Ed. 2d 527, 548–563 (1967).

[28] However, in some instances the district court has been granted discretion to permit public access to delinquency hearings on a case-by-case basis. *See, e.g.*, United States v. A.D., 28 F.3d 1353, 1361 (3d Cir. 1994); *In re* Wash. Post Motion to Open Juvenile Det. Hearing, 247 F. Supp. 2d 761, 762–763 (D. Md. 2003).

[29] 18 U.S.C. § 5037(a).

[30] 18 U.S.C. § 5037(b)(2)–(c)(2).

[31] Unlike regular criminal records, which anyone can get, you can only get "juvenile records" with special permission or procedures. *See* 34 U.S.C. § 11186; 18 U.S.C. § 5038. In some jurisdictions, including New York State, "juvenile convictions" can be used to calculate a later adult sentence. *See, e.g.*, United States v. Franklyn, 157 F.3d 90, 99–100 (2d Cir. 1998) (considering prior juvenile convictions for putting the defendant in a higher sentence category because his criminal history score did not show the seriousness of his criminal history since his convictions as a youth had not been counted for the score); United States v. Matthews, 205 F.3d 544, 548 (2d Cir. 2000) (at sentencing, trial judge could consider defendant's conviction as a youth under New York's youthful offender statute). Courts have mixed opinions about whether adult convictions or adult sentences are most important when figuring out a later sentence. Some courts have said that a young person must have received an adult sentence in order for that conviction to count when figuring out a later adult sentence. *See* United States v. Mason, 284 F.3d 555, 562 (4th Cir. 2002) (holding that defendant's prior conviction led to sentencing as a youth and so could not be counted as a predicate felony for purposes of figuring out if he was a "career offender," which would have led to a higher sentence). *But see* United States v. Manley, 851 F. App'x 636, 636 (7th Cir. 2021) (finding that when deciding whether a conviction from before counts as a predicate felony, the most important factor is whether the defendant was convicted as an adult, not whether he was sentenced as an adult); United States v. Jones, 415 F.3d 256, 264 (2d Cir. 2005) (finding that when deciding career offender status, a youthful offender decision could count as an adult conviction if the defendant had pleaded guilty in an adult forum and had received and served a sentence of over a year in an adult prison); United States v. Cruz 136 F. App'x 386, 388–389 (2d Cir. 2005) (*unpublished*) (prior conviction from when defendant was a young person counts toward deciding if he was a career offender, when defendant had been convicted in an adult court and received and served an adult sentence, even though under state law, he was classified as a "youthful offender"); United States v. Gregory, 591 F.3d 964, 968 (7th Cir. 2010) (stating that a prior conviction counted for figuring out a future sentence because the defendants' sentences were for adult convictions even though they had served time in a youth, not in an adult, prison).

[32] State statutes (laws) may also require the sealing of juvenile records. *See* Donohue v. Hoey, 109 F. App'x 340,

Second, if the government did not follow any of the above rules at your hearing, then you have the right to appeal in two ways. The first way you can appeal is to use the government's mistake to appeal your entire conviction. If your appeal works, then you may have your conviction overturned or erased. The second way you can appeal is to challenge the mistake in order to get better living conditions. (For instance, you might be able to appeal a failure to consider you a "Youthful Offender," which can affect the consequences of your conviction.[33]) You can complain that you are not being treated fairly based on the rules that the government must follow for juveniles. If this challenge works, you may be able to switch to better living conditions or get into a new incarceration program. This challenge is described in detail in Part C below. If possible, try to get a lawyer or an adult to assist you with any legal papers. You should talk to your lawyer about your options and the type of appeal that would be most likely to help you.

The most important part of your appeal is the way you describe the facts of your case. In juvenile cases, judges have a lot of power and can make decisions "in the interests of justice." For example, because it is a juvenile case, the judge may choose to ignore any mistakes made by the government and refuse to overturn the conviction if the facts of your crime make you sound like a dangerous threat to the community. As a result, you should be very careful about how you talk about your crime and yourself. You should also help the judge understand any circumstances or facts that might work in your favor. You should never lie to a judge. Lying in court is a crime. However, you do not need to draw attention to the most serious parts of your crime either. You need to show the judge that you have "rehabilitative potential." This means you have to show that you want to change your life and that you will not commit crimes in the future. A judge looking at your case will try to figure out which is greater: your rehabilitative potential or the seriousness of your offense.

3. Being Tried as an Adult in the Federal System

(a) Agreeing to be Tried as an Adult

You may agree to be tried as an adult as part of a "plea agreement" so that you get a shorter sentence.[34] In plea agreements, you and the prosecutor make a deal in which you plead guilty to a specific crime. In return for pleading guilty, the government recommends the judge give you a lesser sentence than what you would likely receive if you went to trial and were found guilty.

You should know, however, that you will not always get a shorter sentence by agreeing to be tried as an adult. Usually, you need to have the right background. The federal government's sentencing guidelines can sometimes be harsh for young people. They do not usually consider the defendant's age as a reason for giving a shorter sentence. To be sure that you are making the right choice for yourself, speak with your lawyer.

To agree to be tried as an adult, you must go in front of the court and tell the judge that you know what you are doing and fully understand the legal results of being tried as an adult. Before you do this, you should talk to your lawyer and make sure that you really understand and that this is something you definitely want to do. If you do not understand, you should let the judge know that you are confused or need more information. The decision about whether to be tried as an adult is very important and impacts your future. Remember, being tried as an adult could affect future convictions and sentencing decisions you may face. It is your lawyer's job to be your voice in court and to make sure that you understand what is going on so that you can make informed decisions. Do not be afraid to ask a lot of questions and speak up when you do not understand something–speaking up to your lawyer or to the judge when you are in court can help protect your rights and ensure you get a fair opportunity to share your case.

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365 (10th Cir. 2004) (*unpublished*) ("Courts have recognized that a state statute can seal records, thus creating a legitimate privacy expectation for a juvenile.").

[33] See Subsection C(2)(c) of this Chapter, "Youthful Offender Treatment," for more information on Youthful Offender status.

[34] *See*, *e.g.*, Hernandez v. United States, 839 F. Supp. 140, 145 (E.D.N.Y. 1993) (noting that a young person consented to trial as an adult as part of a plea agreement).

In order for the government to try you as a juvenile, you must agree to that in writing. However, to be tried as an adult, you must give up your right and knowingly refuse to agree to be tried as a juvenile.[35]

If you did not know that you had a right to be tried as a juvenile, then you probably did not agree to be tried as an adult.[36] Similarly, the government cannot prove you gave up your right to be tried as a juvenile just by showing that you did not agree to be tried as one. Even if the government proves that you did not agree to be tried as a juvenile, that does not mean that you *knowingly* did so.[37]

If you did not agree to be tried as an adult in front of a judge, or if you did not fully understand what you were doing, then you may be able to challenge your conviction for those reasons.

(a) Mandatory Transfer to Adult Status

Under the JJDPA, some young people in federal court must be tried as adults, whether or not they agree to it. The JJDPA states you must be tried as an adult if (1) the alleged crime happened after you turned sixteen, (2) the alleged crime involved physical force, and (3) you were previously convicted of certain crimes listed in the statute. Note that all three things must be true for the court to be required to try you as an adult. This is called mandatory transfer to adult status.

As one court explained it, transfer of young people to adult status is mandatory "for purposes of prosecution where:

(1) A young person, after his sixteenth birthday, allegedly commits an offense that would be a felony if committed by an adult;
(2) The offense involved the use, attempted use, or threatened use of physical force or, by its very nature, involved a substantial risk that physical force would be used in committing the offense; and
(3) The young person 'has previously been found guilty of an act which if committed by an adult would have been' one of the enumerated offenses supporting discretionary transfer."[38]

Whether you have been convicted in the past is important when figuring out whether you will be transferred to adult status. If the government is arguing that you have to be transferred to adult status, the government is only allowed to bring up convictions that happened before the crime you are being accused of in your trial.

If your mandatory transfer was made because of a crime you were convicted of after you committed the crime that you are now being charged with, then you can appeal your transfer for this reason.[39] Also, if your transfer was made without a hearing, you can use this rule to challenge your transfer.[40]

(b) Discretionary Transfer to Adult Status in the Federal System

Even if you do not agree to be tried as an adult and the government does not have enough evidence to make your transfer mandatory, your case might still be transferred to adult court. The discretionary parts of the JJDPA allow judges to transfer you to adult status in certain circumstances, even if transfer is not mandatory.[41] This means that a judge can still decide to try you as an adult even though

[35] 18 U.S.C. § 5032.

[36] *See*, *e.g.*, United States v. Williams, 459 F.2d 903, 904 (2d Cir. 1972) (holding that in order to make an intelligent waiver of his right to be tried as a juvenile, the young person must in some manner be fully apprised of his rights and respective consequences of proceeding as an adult).

[37] *See* United States v. Williams, 459 F.2d 903, 907–908 (2d Cir. 1972).

[38] United States v. Juvenile Male, 844 F. Supp. 2d 333, 338 n.5 (E.D.N.Y. 2012) (citing 18 U.S.C. § 5032).

[39] *See* 18 U.S.C. § 5032; *see also* United States v. Doe, 74 F. Supp. 2d 310, 314 (S.D.N.Y. 1999).

[40] United States v. Rivera, 912 F. Supp. 70, 73–74 (S.D.N.Y. 1995) (vacating criminal proceedings and forcing the government to start over when the government did not follow the steps required by the JJDPA).

[41] 18 U.S.C. § 5032.

he does not have to. When the government asks the judge for a discretionary transfer, there must be a separate "discretionary transfer hearing" to decide whether you can be transferred to adult status.[42]

(i) *Discretionary Transfer Hearing*

At the hearing, your record will have to be certified and then the court will look at certain things. The Attorney General must certify any juvenile records that you may have. This means that if you have gone to court for crimes as a youth before, the Attorney General must make sure the court has a copy of those records. If this certification has not happened yet, you can challenge the transfer. After certification, the court will decide whether or not to transfer you to adult status. The court should only transfer you to adult status if it is "in the interest of justice."[43] The court will use the following factors to decide whether to transfer you to adult status:

(1) your age and social background (for example, where you grew up, your lifestyle, whether you were in foster care, your economic status, and whether you were the victim of physical or emotional abuse);
(2) the nature of the crime you were accused of (e.g., whether the crime involved violence or someone was killed);
(3) your prior juvenile record (e.g., whether you have been convicted of any crimes in the past and, if so, how many);
(4) your present intellectual development and maturity (e.g., your current school year, whether you can read, whether you have any learning disabilities, whether you suffer from a psychological condition like schizophrenia or depression, and whether you can understand your actions and the effects they have on others);
(5) your response to past treatments and the nature of those treatments (e.g., whether you have been treated in the past for similar problems and whether such treatment has worked); and
(6) the availability of programs to treat any "behavioral problems" (whether there are treatment programs that can help you change).[44]

The court will analyze these factors. Then, the court will weigh how likely your "rehabilitation" (changing your ways) is against your potential danger to the community (how much of a threat you are to the people around you).[45] The court will look at your entire situation. One single factor will probably not determine your chances.

(ii) *Trying to Keep Your Juvenile Status at the Discretionary Transfer Hearing*

Before your transfer hearing, you should tell your lawyer any information about your situation that is related to the six factors above. Tell your lawyer as much about yourself and your history as you can. Let your lawyer know what you were thinking and why you behaved the way you did. You should also tell your lawyer if you really do not remember why you acted a certain way. Let them know if you have any problems with drugs or alcohol, if your life at home has been very difficult, or if you have problems learning in school.

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[42] *See* 18 U.S.C. § 5032. For a list of factors that a judge must consider in deciding whether to approve a discretionary transfer, see United States v. Ramirez, 297 F.3d 185, 192 (2d Cir. 2002).

[43] United States v. Male Juvenile E.L.C., 396 F.3d 458, 461 (1st Cir. 2005) (requiring discretionary transfers to be in the interest of justice).

[44] United States v. Doe, 113 F. Supp. 2d 604, 605 (S.D.N.Y. 2000) (describing the factors that a judge must consider in deciding whether to ask for a discretionary transfer).

[45] United States v. A.C.P., No. 04–159(PG), 2005 U.S. Dist. LEXIS 11306, at *5–6 (D.P.R. Apr. 28, 2005) (*unpublished*) ("The purpose of the juvenile delinquency process is to 'remove juveniles from the ordinary criminal process in order to avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation.' The court must balance these important interests against 'the need to protect the public from violent and dangerous individuals.'" (quoting United States v. Male Juvenile E.L.C., 396 F.3d 458, 461 (1st Cir. 2005))).

It may be a good idea to get tested for a learning disability. If you have a history of poor performance in school, the judge might think you are unlikely to change. If you show that your poor performance is due to a learning disability, this may help you keep your juvenile status. If you keep your juvenile status, you can stay out of adult criminal court.

At the hearing, the judge can also consider any crimes you committed after the offense at issue but before the transfer hearing. So, you should do your best to avoid problems with the law during that time. It will help you during the hearing if you are on your best behavior. You should try to show signs that you can improve your behavior.

(iii) *Challenging Your "Discretionary Transfer"*

Generally, you can have your conviction vacated (reversed) if there was no discretionary transfer hearing and you were wrongly treated as an adult. You usually should not have been treated as an adult if you were under eighteen years old at the time of the alleged crime and under twenty-one years old when the prosecution began.[46]

If there was a discretionary transfer hearing, then it may be hard to challenge the transfer. One way to challenge the transfer is to convince a court that the government did not show everything it was supposed to. The government has to prove by a "preponderance of the evidence" (more likely than not) that the reasons for transferring you to adult status outweighed the reasons for keeping your juvenile status.[47] There is a statutory presumption in favor of treatment as a juvenile (meaning, the court will begin the process assuming you should be tried as a juvenile).[48]

Although you must convince the judge that your rehabilitation is "likely,"[49] the government must still show that your rehabilitation is not likely. One way they may do this is by showing that you are not likely to change even after help. The government may use this to argue that you should be charged as an adult because the rehabilitation services you need are not available to young people. The government must demonstrate "that it has investigated various options but it is still unable to find a suitable and available program" for your behavior problem.[50] This means that the government must have tried many times to find a program but could not find one that was good for you. If the government did not show this in your transfer hearing, you can appeal the transfer.

Courts do not usually overturn transfer decisions. Higher courts (courts that review appeals) usually trust the lower courts' decisions and will only overturn decisions where there was an "abuse of discretion." An "abuse of discretion" means the decision was completely unreasonable and obviously

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[46] United States v. Rivera, 912 F. Supp. 70, 73–74 (S.D.N.Y. 1995) (vacating criminal proceedings and forcing the government to start over when the government did not follow the steps required by the JJDPA).

[47] Rosado v. Corr., 109 F.3d 62, 63 (1st Cir. 1997) (adopting a preponderance of evidence standard for transfer to adult status in agreement with the 2d, 6th, and 11th Circuits); United States v. Doe, 113 F. Supp. 2d 604, 605 (S.D.N.Y. 2000) ("Juvenile adjudication is presumed appropriate unless the government establishes by a preponderance of the evidence that prosecution as an adult is warranted."). "Preponderance of the evidence" here means that the government's reasons for transferring you to adult status must be more likely true and convincing than not true. In other words, more than 50% of their evidence must support their case. This standard is lower than standards of evidence used in other contexts, including "clear and convincing" evidence and "beyond a reasonable doubt."

[48] United States v. A.F.F., 144 F. Supp. 2d 797, 801 (E.D. Mich. 2001) ("There is a statutory presumption in favor of treating the offender as a juvenile."). A court should deny a motion to transfer "where, all things considered, the juvenile has a realistic chance of rehabilitative potential in available treatment facilities during the period of his minority." However, a "realistic chance" involves more than a futile or empty gesture toward rehabilitation. United States v. E.K., 471 F. Supp. 924, 932 (D. Ore. 1979).

[49] United States v. Ramirez, 297 F.3d 185, 193, (2d Cir. 2002) (determining that when a crime is especially serious, this may be given greater weight by the court than the other transfer factors); United States v. L.M., 425 F. Supp. 2d 948, 954 (N.D. Iowa 2006) (recognizing that under the JJDPA, a court may consider in transfer proceedings the young person's background, intellectual development, and emotional maturity as they relate to the possibility of rehabilitation).

[50] United States v. Nelson, 68 F.3d 583, 591 (2d Cir. 1995); *see also* United States v. Doe, 113 F. Supp. 2d 604, 609 (S.D.N.Y. 2000) (stating that the government must do more than "merely assert the unavailability of an appropriate juvenile rehabilitation program . . . to carry its burden of persuading the court that no such programs exist").

wrong. Because this is a very difficult standard to meet, higher courts generally do not overturn lower court decisions.

(c) Making Sure You Get JJDPA Protections if You Are Eligible

In the federal system, if you committed a crime before your eighteenth birthday and you are under twenty-one years old, you are a juvenile. Once you turn twenty-one years old, you are not a juvenile, and the JJDPA does not protect you.

If you are currently older than eighteen years old and you are accused of committing a crime sometime after your eighteenth birthday, then you are not a juvenile. The JJDPA does not apply to you. However, if you are between eighteen and twenty-one years old and you are being charged for a crime that happened when you were younger than eighteen years old, then you are a juvenile under the JJDPA.

After your twenty-first birthday, the JJDPA no longer applies to you, even if the crime happened before your eighteenth birthday.[51] For this reason, prosecutors may try to delay your trial until after your twenty-first birthday.[52] The JJDPA does not always require prosecution for acts that happened before your eighteenth birthday to begin before your twenty-first birthday.[53] In other words, if you are charged after your twenty-first birthday, you do not have an unconditional right to the protections of the JJDPA.[54] The judge might decide to try you as an adult if the delay is your fault (for example, if you skipped bail or ran away).[55]

You may be able to challenge this delay. Some courts may consider the delay to be a violation of your constitutional due process rights. To bring this challenge, you can show that the delay was due to "unjustifiable government conduct" or "illegitimate prosecutorial motives" (when the prosecutor illegally wants to make things harder for you).[56] However, it is hard to prove the prosecutor engaged

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[51] United States v. Wright, 540 F.3d 833, 839 (8th Cir. 2008) (stating that a defendant accused of committing a crime before his 18th birthday may not claim the protections of the JJDPA if criminal proceedings begin after the defendant reaches the age of 21); United States v. Ramirez, 297 F.3d 185, 191 (2d Cir. 2002) (observing that "courts have uniformly concluded that the applicability of the JJDPA is determined by the defendant's age at the time of filing the [charges for crimes of 'juvenile delinquency']"); United States v. Araiza-Valdez, 713 F.2d 430, 432–433 (9th Cir. 1980) (finding that filing the complaint is not sufficient to begin proceedings under the JJDPA); United States v. Doe, 631 F.2d 110, 112–113 (9th Cir. 1980) (allowing treatment of a defendant over 21 years old as a juvenile where both the charges and the indictment were filed before defendant's 21st birthday); United States v. Hoo, 825 F.2d 667, 669–670 (2d Cir. 1987) (explaining that defendant who is alleged to have committed a crime before his 18th birthday may not invoke the protection of the JJDPA if criminal proceedings begin after the defendant reaches the age of 21); *In re* Martin, 788 F.2d 696, 697–698 (11th Cir. 1986) (noting that the date of the indictment, not the complaint, determines the start date of criminal proceedings for the purpose of calculating age and application of JJDPA).

[52] United States v. Smith, 851 F.2d 706, 709–710 (4th Cir. 1988) (saying that once a defendant is proceeded against as a "juvenile delinquent," he may still be tried as a juvenile at the age of 21 if there are delays caused by the government, even if the delays are not in bad faith); United States v. Doe, 631 F.2d 110, 113 (9th Cir. 1980) (saying that intentional government delay of bringing charges until suspect may be 21 years old is unconstitutional).

[53] United States v. Wong, 40 F.3d 1347, 1367 (2d Cir. 1994); *In re* Martin*,* 788 F.2d 696, 697–698 (11th Cir. 1986); United States v. Araiza-Valdez, 713 F.2d 430, 432–433 (9th Cir. 1980); United States v. Doe, 631 F.2d 110, 112–113 (9th Cir. 1980).

[54] United States v. Ramirez, 297 F.3d 185, 191 (2d Cir. 2002) (explaining that the JJDPA doesn't apply to persons indicted after they turned 21); United States v. Hoo, 825 F.2d 667, 671 (2d Cir. 1987) (noting that a defendant charged two weeks after 21st birthday was not entitled to protection of JJDPA for offenses committed prior to 18th birthday, even though delay was through no fault of his own); United States v. Wai Ho Tsang, 632 F. Supp. 1336, 1339 (S.D.N.Y. 1986) (noting that there is no guarantee of JJDPA treatment and no automatic presumption against delays resulting in changed status).

[55] United States v. Araiza-Valdez, 713 F.2d 430, 432–433 (9th Cir. 1980) (explaining that through voluntary actions and ignoring the proceedings, the defendant had "outgrown" his status under JJDPA).

[56] *See* United States v. Scala, 388 F. Supp. 2d 396, 399 (S.D.N.Y. 2005) (stating that in order for due process concerns to exist, there must have been (1) substantial prejudice to the defendant, and (2) delay was used intentionally as a tactical device); United States v. Gross, 165 F. Supp. 2d 372, 377–378 (E.D.N.Y. 2001)

in this type of behavior, which is also called "prosecutorial misconduct." Sometimes, ongoing investigations delay prosecutions, and courts will usually accept this as a valid reason for a prosecutor to bring the case late.[57]

To challenge delays on the basis of prosecutorial misconduct, you must prove that:

(1) The prosecutor delayed bringing your case on purpose. They did this to gain an unfair advantage or to serve an unlawful purpose;[58]
(2) Your case was hurt or "prejudiced" by this delay;[59] and
(3) The delay was the prosecutor's fault. The prosecutor cannot show that the delay was due to your actions or the actions of your attorney.[60]

If you are under eighteen and tried as an adult, you are still protected by the JJDPA until you turn eighteen. When you turn eighteen, the JJDPA protections no longer apply to you. For example, once you turn eighteen, you can be held in a cell with other adults.

If you are under the age of majority and you are not transferred to adult status, you can only be convicted of juvenile delinquency. You cannot be convicted of any other crime. The JJDPA protections will extend to you until you are twenty-one years old. This means that if you are prosecuted as a juvenile, you will still be separated from the adult incarcerated people[61] until your twenty-first birthday. Even if you turn twenty-one during the prosecution of your case, you are still protected by the JJDPA.[62]

(explaining that dismissal is proper in situations where allowing the trial to proceed would be so unfair as to violate "fundamental conceptions of justice" (citing United States v. Lovasco, 431 U.S. 783, 790, 97 S. Ct. 2044, 2049, 52 L. Ed. 2d 752, 759 (1977))); United States v. Wai Ho Tsang, 632 F. Supp. 1336, 1339 (S.D.N.Y. 1986) (holding that delay could violate the Due Process Clause if the delay was due to unjustified conduct of the government or illegitimate motives of the prosecution); *see also* United States v. Davilla, 911 F. Supp. 127, 130 (S.D.N.Y. 1996) (stating that plaintiff could not simply allege improper delay, but must make some affirmative showing of an improper prosecutorial motive in the delay).

[57] *See*, *e.g.*, United States v. Persico, 10-CR-147 (S-4) (SLT), 2012 U.S. Dist. LEXIS 67881, at *23–25 (E.D.N.Y. May 10, 2012) (*unpublished*) (no violation of due process where defendant fails to meet "heavy burden" of proving improper motive for the delay); United States v. Hoo, 825 F.2d 667, 671 (2d Cir. 1987) (finding that the "due process clause does not require that decisions to prosecute be subjected to pre-indictment judicial inquiry simply because the timing of the decision affects the availability of juvenile procedures" without showing of improper prosecutorial motive); United States v. Lovasco, 431 U.S. 783, 791, 97 S. Ct. 2044, 2049, 52 L.Ed.2d 752, 759 (1977) (affirming prosecutorial discretion in timing the indictment). *But see* United States v. DeCologero, 530 F.3d 36, 78 (1st Cir. 2008) (acknowledging that the statute of limitations generally provides the primary protection of a defendant's due process rights in the context of delay (citing United States v. Soto-Beniquez, 356 F.3d 1, 25 (1st Cir. 2003))).

[58] *See* United States v. Scala, 388 F. Supp. 2d 396, 399 (S.D.N.Y. 2005); United States v. Hoo, 825 F.2d 667, 671 (2d Cir. 1987).

[59] *See* United States v. Marion, 404 U.S. 307, 324, 92 S. Ct. 455, 465, 30 L. Ed. 2d 468, 481 (1971) (holding that the Due Process Clause requires the dismissal of an indictment because of pre-indictment delay in this case only when the delay causes "substantial prejudice to appellees' rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused"). *But see* United States v. Lovasco, 431 U.S. 783, 789, 97 S. Ct. 2044, 2048–2049, 52 L. Ed. 2d 752, 759 (1977) (holding that a good faith investigative delay in prosecution, even if it prejudices the defendant, does not necessarily violate due process rights); United States v. DeCologero, 530 F.3d 36, 78 (1st Cir. 2008) (holding that "substantial prejudice" requires more than mere inconvenience to the defendant and must involve a demonstration of actual prejudice; the unavailability of witnesses or evidence may not be sufficient).

[60] *See* United States v. Doe, 49 F.3d 859, 866 (2d Cir. 1995) (excusing the government's delay because of the defendant's own lies about his age and other bad conduct); United States v. Chambers, 944 F.2d 1253, 1260 (6th Cir. 1991) (excusing the delay because the defense was at fault for failing to raise the issue of juvenile status), *superseded by statute on other grounds as recognized in* United States v. Avery, 128 F.3d 966, 972 (6th Cir. 1997).

[61] If you are either younger than 18 or were treated as a juvenile and are younger than 21, and you have not been separated from adult incarcerated people, you can bring a § 1983 motion in court to enforce your rights. For more information, see Part D of this Chapter.

[62] United States v. Ramirez, 297 F.3d 185, 192 (2d Cir. 2002) (finding that the JDA continues to apply to defendants' criminal prosecutions even though they are now over 21 years old); United States v. Leon H., 365 F.3d 750, 753 (9th Cir. 2004) (finding that the Act applies if the defendant filed the case before turning 21) (citing United States v. Doe, 631 F.2d 110, 112–113 (9th Cir. 1980)).

C. Procedure in New York State[63]

1. Who is Considered a Juvenile in New York State?

The rules in New York State courts are not as clear as the rules in federal court. In New York, youth who are accused of committing crimes fall into four categories: (1) adult, (2) "juvenile delinquent," (3) "juvenile offender," and (4) "adolescent offender."[64]

If you were eighteen or older when the crime happened, you will be treated as an adult and the rest of this Section will not apply to you. But if you were younger than eighteen when the crime happened, you need to figure out whether you are considered a "juvenile delinquent," "juvenile offender," or "adolescent offender." Your age at the time the crime was committed is the one that determines how you will be tried.

If you were eighteen years old or older when you committed a crime, then New York State considers you an adult. As an adult, the State will charge you with crimes and punish you as an adult in adult court. If you were seventeen years old or younger when the crime happened, you will be tried as a juvenile in Family Court (as long as you are not a "juvenile offender" or "adolescent offender"). This is true even if you are now eighteen or older.

(a) "Juvenile Delinquent"

You are considered a "juvenile delinquent" if you are older than seven but younger than eighteen and commit an act that would be a crime if it had been committed by an adult. Specifically, sixteen- and seventeen-year-olds charged with misdemeanors are considered juvenile delinquents. If you are considered a juvenile delinquent, your case is handled in a confidential Family Court proceeding. The court will decide if you need supervision, treatment, or placement through the local Department of Social Services or the New York State Office of Children and Family Services. juvenile delinquents do not have criminal records, and, in some instances, your case can be sealed (kept confidential).

If you are being treated as a juvenile delinquent, then you are being treated under the delinquency procedures. These can be more favorable to you than adult criminal procedures. The rest of this Section will not apply to you.

(b) "Juvenile Offender" ("JO")

You are considered a "juvenile offender," or JO, if you committed a serious crime when you were thirteen, fourteen, or fifteen.[65] Your case will be heard in the Youth Part of the Supreme or County Court.[66] If you are convicted as a JO, you will have a permanent criminal record unless the Court grants you Youth Offender status.[67] As a JO, your case can be transferred to Family Court where you will be considered a "juvenile delinquent." Your case will only be transferred to Family Court if the Youth Part of the Supreme or County Court determines that the transfer would be in the interests of justice.[68]

You will be prosecuted as a JO if you are charged with the following crimes at the designated ages:

(1) Thirteen-year-olds charged with murder or a sexually motivated felony; and
(2) Fourteen- and fifteen-year-olds charged with murder, attempted murder, kidnapping, attempted kidnapping, arson, assault, manslaughter, rape, or a criminal sexual act, aggravated sexual abuse, burglary, robbery, or firearm possession on school grounds.[69]

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[63] For a history of the development of the New York State system, see Michael A. Corriero, *Juvenile Sentencing: The New York Youth Part as a Model*, 11 FED. SENT'G REP. 278, 279 (1999).

[64] New York State most recently changed its categories for offenses committed by youth in the 2017 legislative session. *See* Assemb. B. 3009-C, 2017-18 Leg., 2017 Sess. (N.Y. 2017) (enacted in N.Y. CRIM. PROC. LAW §722).

[65] N.Y. PENAL LAW §10.00(18)(1)–(2) (McKinney 2009).

[66] N.Y. CRIM. PROC. LAW §722.10 (McKinney 2006).

[67] *See* Part C(2)(c) of this Chapter.

[68] N.Y. CRIM. PROC. LAW §722.22 (McKinney 2011).

[69] N.Y. PENAL LAW §10.00(18)(2) (McKinney 2009).

(c) "Adolescent Offender" ("AO")

The "adolescent offender" category was created by the 2017 Raise the Age law.[70] You are considered an adolescent offender ("AO") if you are sixteen or seventeen years old and are charged with a felony. Your case would start in the Youth Part of the Supreme or County Court.[71] As an AO, your case can be transferred to Family Court, where you will be considered a juvenile delinquent if the Court determines that the transfer is in the interests of justice. If you stay in the Youth Part as an AO, you will be treated as an adult, but the judge will consider your age when deciding your sentence at the sentencing phase.[72]

If your trial was in Family Court, you were tried as a juvenile delinquent. If your trial was in the Youth Part of a criminal court, you were tried as a JO or AO. If you will be treated as a JO or AO, there are ways for your case to be transferred from adult court to Family Court. Transferring to Family Court comes with some benefits. You should talk to your defense attorney about requesting this "removal."[73]

If you are being treated as a JO or AO, then the government must follow some rules. The rest of this Part explains some of those rules for JOs and AOs. If you think that the government did not follow any of these rules in your case, you should talk to your lawyer. You may have a reason to appeal.

2. Being Tried as a Juvenile Offender ("JO")

(a) Transferring to Family Court

There are several advantages to transferring your case from criminal court to Family Court. If you are transferred to Family Court, you will probably have better facilities while you are detained. If you are convicted, the judge will have more flexibility to lower your sentence. Also, you will not have a criminal conviction on your permanent record. Family Court records are automatically sealed (kept secret) if you win your case. If you lose your case, then you will have to apply to get the court to keep your records sealed.

If you are being treated as a JO, there are three ways to have your case transferred to Family Court: (1) the district attorney asks for your case to be transferred, (2) you make a motion to transfer your case, or (3) the court believes that there is "reasonable cause" that you do not fit in the JO category.

The district attorney can always ask that your case be transferred to family court if doing so would be in the interests of justice.[74] You should talk to your lawyer to see if the prosecutor in your case is willing to do this for you.

You can also make a motion to transfer your case to Family Court. You can only do this if you have not waived your felony hearing and if the hearing has not started yet. The transfer must also be in the interest of justice.[75] If you do not know if you waived your hearing or if it has started, talk to your lawyer.

After receiving your motion to be transferred, the court will look at what you are charged with and will examine the following:

(1) The seriousness and circumstances of the offense;
(2) How much harm the crime caused;
(3) The evidence of guilt against you, even if it will not be admitted in trial;

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[70] Assemb. B. 3009-C, 2017-18 Leg., 2017 Sess. (N.Y. 2017) (enacted in N.Y. CRIM. PROC. LAW § 1.20).

[71] N.Y. CRIM. PROC. LAW §722.21(1) (McKinney 2011).

[72] N.Y. CRIM. PROC. LAW §60.10-a (McKinney 2016).

[73] N.Y. CRIM. PROC. LAW §§ 180.75 (McKinney 2007); N.Y. CRIM. PROC. LAW § 722.23 (McKinney 2011); *see* People v. Roe, 74 N.Y.2d 20, 28, 542 N.E.2d 610, 614, 544 N.Y.S.2d 297, 301 (N.Y. 1989) (acknowledging that "[i]f [a young person tried as an adult] is convicted of only a lesser offense for which he is not criminally responsible by reason of infancy, that conviction is vacated and replaced by a juvenile delinquency fact determination and the matter removed to Family Court").

[74] N.Y. CRIM. PROC. LAW § 722.22(1)(a) (McKinney 2011).

[75] N.Y. CRIM. PROC. LAW §§ 722.22(1)(a), 722.20(5) (McKinney 2011).

(4) Your history, character, and condition;
(5) The sentence the court can impose on you for the offense;
(6) Whether removing your case to Family Court will hurt the safety or welfare of the community;
(7) Whether removing your case to Family Court will hurt the public's trust in the criminal justice system;
(8) The way the victim feels about removing your case to Family Court; and
(9) Any other relevant fact that might mean that convicting you in criminal court would serve no useful purpose.[76]

You must convince the court that you are open to rehabilitation and are not a threat to the community. Talk to your lawyer about how to best convince them.

It might be harder to get transferred to Family Court if you were charged with a "serious offense." If you are charged with second-degree murder, first-degree rape, a first-degree criminal sexual act, or an armed felony, you can argue that you should be transferred to Family Court because it is in the interests of justice. However, the district attorney must agree, and you also have to convince the court that one of the following three reasons applies to your case:

(1) There are "mitigating circumstances," which means that something unique to you or to your case suggests that you should be treated less harshly;
(2) Other people were involved in the crime and your participation was minor (although not so minor that you should not have been charged in the first place); or
(3) There is not enough evidence, or there is something wrong with the evidence being used to prove that you committed the crime.[77]

If you waived your felony hearing or if your hearing has already started, then you cannot make a motion to remove your case to Family Court. However, the court will remove your case to Family Court anyway if, after the hearing, the court finds reasonable cause to believe that you are a juvenile delinquent and not a JO.[78] A juvenile delinquent is a child between seven and sixteen years old who committed an act that would be criminal if an adult committed it but is not able to be charged because of their age.

If you are younger than eighteen and are charged with both JO and non-JO crimes (charges that would have been heard in Family Court without the JO charges), and you are only found guilty of non-JO crimes, then you have to be sentenced in Family Court. This is true even if your case was heard in criminal court.[79] If this happens and you are in detention, the Family Court has ten days to make its decision unless you agree to give the court more time.[80]

You also will be sentenced in Family Court if you reach a plea agreement on a non-JO offense. This is only true if you were in County Court (not Supreme Court) before being removed.[81] If you were sentenced for a non-JO crime in criminal court, you can appeal your sentence and have it vacated (eliminated).

After your case is in Family Court, problems with "juvenile delinquency petitions" may influence your disposition and punishment.[82] However, New York State courts may not let you move back into

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[76] N.Y. CRIM. PROC. LAW § 722.22(2) (McKinney 2011).

[77] N.Y. CRIM. PROC. LAW § 722.20(4) (McKinney 2011).

[78] N.Y. CRIM. PROC. LAW §722.21(3)(b) (McKinney 2011).

[79] *See, e.g.*, *In re* Williams, 120 Misc. 2d 257, 258, 465 N.Y.S.2d 949, 950 (Fam. Ct. Onondaga County 1983) (removing a case where a defendant was only found guilty for juvenile offense to Family Court).

[80] N.Y. FAM. CT. ACT § 350.1 (McKinney 2008); *see, e.g.*, *In re* Julu LL, 217 A.D.2d 749, 751, 629 N.Y.S.2d 507, 508 (3d Dept. 1995) (dismissing proceeding for failing to hold a dispositional hearing within 10 days).

[81] *See* People v. Statton, 156 Misc. 2d 778, 781, 594 N.Y.S.2d 580, 582 (Cnty. Ct. Nassau County 1992) ("The removal to Family Court is mandated after a juvenile pleads to a crime for which he is not criminally responsible.").

[82] *In re* Michael M., 3 N.Y.3d 441, 448, 821 N.E.2d 537, 542, 788 N.Y.S.2d 299, 304 (2004) (observing that the

adult criminal court.[83] But if you are tried in adult court, you may still be able to get yourself declared a "youthful offender" even after entering a plea or after a jury finds you guilty (see Subsection C(2)(c) below).

(b) Sentencing for JOs

If you have been convicted of a JO crime, then you have a criminal record and can receive a range of sentences.[84] The sentence that you receive depends on how your crime is classified. For a Class A Felony of murder in the first degree, the maximum sentence is life imprisonment.[85] For other Class A Felonies of arson or kidnapping in the first degree, the sentence is twelve to fifteen years.[86] For a Class B Felony, the longest sentence is ten years; for a Class C Felony, the longest is seven years; and for a Class D Felony, the longest is four years.[87]

If you were convicted as a JO and received a sentence longer than those listed, you may be able to appeal your sentence. You should tell your lawyer that you think your sentence is too harsh.

(c) Youthful Offender Treatment

(i) *Qualifying as a "Youthful Offender" ("YO")*

If you were tried as a JO, you may be eligible for "youthful offender" status. A "youthful offender" is the term for someone younger than nineteen years old in adult court.[88] As a youthful offender ("YO"), you may receive special protections. For example, protections may shorten your sentence or seal your criminal record.[89]

A court considers nine factors when it weighs whether to grant YO status: (1) whether relieving you of a criminal record would help with your successful rehabilitation and reintegration into society; (2) the manner in which the crime was committed; (3) the role you played in the crime committed; (4) your age at the time of the crime; (5) the length of time since the crime was committed; (6) any mitigating factors at the time of the crime; (7) your criminal record; (8) your attitude toward society and respect for the law; *and* (9) evidence of rehabilitation and demonstration of living a productive life including, but not limited to, participation in educational and work programs, employment history, alcohol and substance abuse treatment, and family and community involvement.[90]

If you meet the requirements, you can qualify as a YO unless one of the following conditions applies to your case. First, you will not be considered a YO if your conviction was for one of the following: (i) a Class A-I or Class A-II felony, (ii) an armed felony involving violence, including possessing or displaying a firearm, or (iii) rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse. Second, you cannot be considered a YO if you have been convicted of a felony

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N.Y. Court of Appeals has "consistently viewed petitions failing to satisfy Family Court Act § 311.2(3) as exhibiting a nonwaivable jurisdictional defect"). A jurisdictional defect means that some element is missing and the court does not have the power to rule on your case.

83 *See* Rodriguez v. Myerson, 69 A.D.2d 162, 170–171, 418 N.Y.S.2d 936, 941 (2d Dept. 1979) (finding that a criminal indictment by a grand jury will not justify removal back to criminal court); People v. Gregory C., 158 Misc. 2d 872, 880, 602 N.Y.S.2d 492, 497 (Sup. Ct. Erie County 1993) (removing a case to Family Court after a grand jury indictment in criminal court).

84 N.Y. PENAL LAW §§ 60.10, 70.05 (McKinney 2021).

85 N.Y. PENAL LAW § 70.05(2)(a) (McKinney 2021).

86 N.Y. PENAL LAW § 70.05(2)(b) (McKinney 2021).

87 N.Y. PENAL LAW § 70.05(2)(c)–(e) (McKinney 2021).

88 N.Y. CRIM. PROC. LAW § 720.10 (McKinney 2011); *see also* People v. Drayton, 39 N.Y.2d 580, 584, 350 N.E.2d 377, 379, 385 N.Y.S.2d 1, 3 (1976) ("The youthful offender provisions of the Criminal Procedure Law emanate from a legislative desire not to stigmatize youths between the ages of 16 and 19 with criminal records triggered by hasty or thoughtless acts which, although crimes, may not have been the serious deeds of hardened criminals.").

89 N.Y. CRIM. PROC. LAW § 720.20(1) (McKinney 2011); *see also* People v. Drayton, 39 N.Y.2d 580, 584, 350 N.E.2d 377, 379, 385 N.Y.S.2d 1, 3 (1976).

90 N.Y. CRIM. PROC. LAW § 720.20(5)(b) (McKinney 2011) (listing the nine factors courts consider in granting YO status).

in the past. Third, you will not be considered a YO in your current case if the court decides that you were a YO for an earlier felony conviction. Finally, you will not be considered a YO if the court decides that you were a juvenile delinquent who was found guilty of a certain felony on or after September 1, 1978.[91] If none of these apply to you, then you may be eligible for YO status.

There is a way to become eligible for YO treatment even if you have been convicted of an armed felony or one of the other felonies listed above.[92] Your felony must involve mitigating circumstances. Mitigating circumstances are special factors that make your conduct more understandable[93] or show that your role was small (for example, if you were a lookout or follower instead of a main actor in a crime).[94]

Your attorney will usually speak with the judge and/or the prosecutor to decide on your YO status. You do not receive YO status until after you are prosecuted and found guilty in the adult system.[95] Once you are found guilty, the sentencing court must consider whether to sentence you as a YO.[96] The court must consider this even if you do not request to be considered a YO.

If the sentencing court does not consider treating you as a YO, you might be able to appeal the court's failure to consider granting you YO status.[97] This is true even if you did not request that the court consider you a youthful offender. This is also true even if you waived your right to appeal generally as part of your plea agreement.[98]

Even if your attorney did not raise your eligible status at sentencing, courts can still decide that you should have been granted YO status. Therefore, the court may change your sentence later.[99] For example, one court changed a sentence after both the court and defense lawyer made a mistake and did not realize that the child was eligible for YO status until after sentencing.[100]

(ii) *Consequences of Youthful Offender Treatment*

First, if you are declared a youthful offender, your conviction in adult court is replaced by a "youthful offender finding." As a result, no conviction for that offense should appear on your criminal

[91] N.Y. CRIM. PROC. LAW § 720.10(2) (McKinney 2011) (listing certain disqualifying felonies).

[92] Essentially, this includes rape in the first degree, criminal sexual acts in the first degree, aggravated sexual abuse or any armed felony.

[93] *See, e.g.*, People v. Cruickshank, 105 A.D.2d 325, 334, 484 N.Y.S.2d 328, 337 (3d Dept. 1985) (giving youthful offender treatment to a defendant who shot her father because of the mitigating circumstance that she had been sexually abused by her father), *aff'd sub. nom.* People v. Dawn Maria C., 67 N.Y.2d 625, 490 N.E.2d 530, 499 N.Y.S.2d 663 (1986); *see also* People v. Shrubsall, 167 A.D.2d 929, 931, 562 N.Y.S.2d 290, 292 (4th Dept. 1990) (granting defendant who killed parent a new, shorter sentence after the court determined that parental abuse of the defendant was the driving force behind the defendant's crime).

[94] *See, e.g.*, People v. Marquis A., 145 A.D.3d 61, 68–70, 40 N.Y.S.3d 609, 615–616 (3d Dept. 2016) (finding that lack of injury to others, lack of criminal record or history of violence, and willingness to cooperate with the police warranted treating defendant as a youthful offender, despite his conviction of armed robbery in the first degree); People v. John "B," 93 A.D.2d 957, 957, 463 N.Y.S.2d 275, 276 (3d Dept. 1983) (finding mitigating circumstances included the facts that the defendant was not a ringleader of the crime, defendant did not carry a gun, and defendant was pressured by older participants to take part in the crime); People v. Thomas R.O., 136 A.D.3d 1400, 1402, 25 N.Y.S.3d 766, 768 (4th Dept. 2016) (finding mental illness to be a mitigating circumstance for purposes of youthful offender determination).

[95] N.Y. CRIM. PROC. LAW § 720.20(1) (McKinney 2011).

[96] People v. Rudolph, 21 N.Y.3d 497, 501, 997 N.E.2d 457, 458, 974 N.Y.S.2d 885, 886 (2013).

[97] People v. Rudolph, 21 N.Y.3d 497, 501, 997 N.E.2d 457, 458, 974 N.Y.S.2d 885, 886 (2013).

[98] People v. Pacherille, 25 N.Y.3d 1021, 1024, 32 N.E.3d 393, 395, 10 N.Y.S.3d 178, 180 (2015) (noting that a valid waiver of the right to appeal is not enforceable in the face of a failure to consider youthful offender treatment).

[96] *See, e.g.*, People v. Harrington, 281 A.D.2d 748, 748–749, 721 N.Y.S.2d. 709, 710 (3d Dept. 2001) (holding that, though a defendant's waiver of the right to appeal normally eliminates his challenge to a denied request for YO treatment, defendant's challenge survives when the Court fails to consider YO treatment at all because YO consideration is mandated by statute).

[100] People v. Torres, 238 A.D.2d 933, 934, 661 N.Y.S.2d 153, 154 (4th Dept. 1997).

record.[101] There are a number of other benefits to having a youthful offender finding instead of a criminal conviction.[102]

Second, there are different penalties for YOs than for people convicted in adult court. For example, YOs who have committed felonies are sentenced like adults convicted of an E-class felony, which is the lowest form of felony. Note that there is one exception for controlled substance crimes.[103] Under E-class felonies, sentences are usually shorter, and probation is available. Once you are considered a YO, that determination cannot be taken away from you without your consent. The court has also found that if the sentence you received in adult court is longer than what you would have received as a YO, the sentence must be overturned.[104]

Third, YOs may have to pay a victim for what the victim lost in the crime ("restitution") or other fees. One example of a required fee is a DNA databank fee.[105]

Fourth, as a YO, if you are convicted of another felony in the future, you will not be considered a "predicate felon" in New York. A "predicate felon" is someone with a prior felony conviction who thus receives much harsher sentences.[106] However, if you are convicted of a felony in another state that does not grant YO status (or if another state court decides not to give you YO status), your prior conviction may be used against you in future sentencing.[107] This is important if you have been convicted before in other places. A court can use those convictions to find out if you are a repeat felony offender.

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[101] N.Y. CRIM. PROC. LAW § 720.35 (McKinney 2011); *see, e.g.*, People v. Cruz, 38 A.D.3d 740, 740, 833 N.Y.S.2d 527, 528 (2d Dept. 2007) ("Once the defendant was adjudicated a youthful offender, his conviction was deemed vacated and replaced by a youthful offender finding, and thus, it may not later be used as a prior felony conviction for a sex crime.").

[102] *See, e.g.*, People v. Gray, 84 N.Y.2d 709, 712, 646 N.E.2d 444, 445, 622 N.Y.S.2d 223, 224 (1995) (noting that a YO finding cannot be used to impeach a defendant's credibility on cross-examination because a YO finding is not considered a criminal conviction); State Farm Fire & Cas. Co. v. Bongiorno, 237 A.D.2d 31, 35–36, 667 N.Y.S.2d 378, 381 (2d Dept. 1997) (holding that a YO finding can be kept confidential from an insurance company forced to indemnify the YO in a civil suit); Nielson v. United Parcel Serv. Inc., 210 A.D.2d 641, 642, 619 N.Y.S.2d 844, 845 (3d Dept. 1994) (acknowledging a probation department's finding that it was not improper for the plaintiff, who claimed he had been denied a promotion based on his YO status, to deny having a criminal record on his application). However, there are some circumstances where your YO finding will not remain confidential. *See, e.g.*, N.Y. CRIM. PROC. LAW § 720.35 (McKinney 2011); *In re* Dillon, 171 Misc. 2d 665, 671, 655 N.Y.S.2d 322, 326 (Cnty. Ct. Nassau County 1997) (holding that YO records could be unsealed where prosecutor demonstrated compelling need for use of records in criminal prosecution of YO's attorney).

[103] Courts cannot impose a sentence of conditional discharge if the YO is convicted of a felony relating to the possession, sale, or use of controlled substances. N.Y. PENAL LAW § 60.02 (McKinney 2009).

[104] People v. Calderon, 79 N.Y.2d 61, 65–67, 588 N.E.2d 61, 63–64, 580 N.Y.S.2d 163, 165–166 (1992) (finding that where a youthful offender finding has been properly made, the court is "statutorily required to sentence defendant pursuant to the mandates of the youthful offender law" and has no authority to revoke its finding that defendant is youthful offender).

[105] N.Y. PENAL LAW § 60.35 (McKinney 2009).

[106] People v. Elliott, 99 Misc. 2d 794, 795, 417 N.Y.S.2d 191, 192 (Sup. Ct. N.Y. County 1979) (finding that "a youthful offender adjudication cannot be used as the basis for a finding that a defendant is a predicate felon"); *see also* People v. Thomas, 33 N.Y.3d 1, 3–4, 121 N.E.3d 270, 271–272, 97 N.Y.S.3d 642, 643–644 (2019). However, different states have different standards regarding youth offender status and predicate felonies. *See, e.g.*, N.C. GS, §§ 148–149.4 (outlining the youthful offender provision in North Carolina, where the status is not discretionary and can be used for predicate felony adjudications). Be sure to check the law in your state. *See JLM*, Chapter 2, "Introduction to Legal Research."

[107] *See* People v. Coolbaugh, 259 A.D.2d 781, 782, 687 N.Y.S.2d 737, 738 (3d Dept. 1999) (holding that "[w]here youthful offender treatment is not accorded in a foreign jurisdiction, the fact that the defendant would have been eligible for youthful offender treatment had the offense been committed in New York does not preclude the use of such conviction in New York as a predicate felon for enhanced sentencing" (quoting People v. Arroyo, 179 A.D.2d 393, 394, 577 N.Y.S.2d 843, 844 (1st Dept. 1992))); People v. Meckwood, 86 A.D.3d 865, 866, 927 N.Y.S.2d 729, 730–731 (3d Dept. 2011) (holding that defendant's prior felony conviction in another state qualified defendant as a "predicate felon" even though that felony would have made him a youthful offender in New York State).

(iii) *Alternatives to Incarceration Programs*

Instead of deciding your YO status before sentencing, a court can issue a deferred sentence. As part of a deferred sentence, the court will order you to participate in an Alternative To Incarceration ("ATI") program. If you complete the program successfully, then you will be granted YO status.

A court can order you to participate in an ATI program in any criminal sentencing in New York.[108] However, an ATI order is especially likely if you are seeking YO status. Because the YO status decision must be made before sentencing, participation in the ATI is not officially part of your sentence. Instead, your sentence is finalized after a progress report from the ATI program.

3. Being Tried as an Adolescent Offender ("AO")

(a) Transferring to Family Court

If you are an adolescent offender charged with a non-violent felony, you will be sent to the Family Court unless the District Attorney files a motion within 30 days requesting that the court keep the case in the Youth Part due to "extraordinary circumstances."[109] If the District Attorney files this motion, you have the chance to oppose the motion. You or the District Attorney can request a hearing at this point. The Judge will decide if the case should be sent to the Family Court within five days of the hearing or motion.[110] If you are an AO charged with a violent felony, you can also have your case sent to the Family Court unless your charges include any of the following:

(1) Displaying a firearm or deadly weapon,
(2) Causing significant physical injury, or
(3) Engaging in unlawful sexual conduct.[111]

If your case involves any of the above elements, you must remain in the Youth Part unless the District Attorney agrees to remove your case to Family Court.[112] If your case does not involve any of these elements, you will remain in the Youth Part if the judge agrees with the District Attorney's motion that "extraordinary circumstances" exist.[113] Vehicle and Traffic Law misdemeanor charges cannot be sent to Family Court.[114]

D. Prison Conditions

There are special rules when the government puts juveniles in prison. The government has to keep you away from adults, even if you are in an adult prison. If you are disabled, the government has to give you an education. This Part explains how these rules work. Section D(1) explains federal law and Section D(2) explains New York State law.

1. Federal Laws About Conditions of Incarceration

(a) Separation from Adults Required by the JJDPA

First, the JJDPA keeps young people in a federal prison away from adults.[115] This law applies everywhere in the federal system. It also applies to any person treated as a juvenile in a state system.

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[108] *See, e.g.*, United States v. Flowers, 983 F. Supp. 159, 170, 173 (E.D.N.Y. 1997) (applying alternative sentences to incarceration for drug trafficking conviction).

[109] N.Y. CRIM PROC. LAW § 722.23 (McKinney 2011).

[110] N.Y. CRIM PROC. LAW § 722.23 (McKinney 2011).

[111] N.Y. CRIM PROC. LAW § 722.23 (McKinney 2011).

[112] N.Y. CRIM PROC. LAW § 722.23 (McKinney 2011).

[113] N.Y. CRIM PROC. LAW § 722.23 (McKinney 2011).

[114] N.Y. CRIM PROC. LAW § 722.23 (McKinney 2011).

[115] 34 U.S.C. § 11133.

The JJDPA only protects you if the state is treating you as a juvenile and not as an adult.[116] The JJDPA does not apply to young people who are treated as adults within a state system.[117]

The JJDPA says there has to be "sight and sound" separation between incarcerated youth and incarcerated adults in the federal system. That means incarcerated people who are eighteen years old or younger have to be kept away from those who are older than eighteen years old.[118] No sight contact means incarcerated adults and incarcerated youth should not be able to see each other. No sound contact means young people and incarcerated adults should not be able to speak directly to one another in the prison.

The building you are in has to keep incarcerated adults away from JOs in all secure areas. This includes admissions, sleeping quarters, and shower and toilet areas. Other areas might be included, too. Contact that happens for a short time by accident does not always break the law. But that is only true when you are in a place that is not just for JOs and is nonresidential. Places where contact might not break the law include areas for hallways and dining, recreation, education, training for a job, health care, or entry areas. In an area of the prison that is only for young people, any contact between incarcerated youth and incarcerated adults breaks the law, and you can report it.[119]

If you are not being kept away from adults, you could have a federal claim under the JJDPA.[120] You may also be able to file a Section 1983 claim of violation of your rights under either the Fourteenth Amendment or the Eighth Amendment to the Constitution.[121] You should talk to your lawyer about these options.

Although young people in adult prisons must be kept away from incarcerated adults, this does not mean that prison officials can isolate you or keep you out of programs. If they do, that might be a violation of your civil rights. If you think you have been unfairly kept out of adult prison programs, you should speak with your lawyer.

(b) Incarcerated Youth with Disabilities

(i) *Before Incarceration*

If you have a disability, you may be eligible for some protections under the Individuals with Disabilities Education Act (IDEA).[122] The disability can be a physical, emotional, or learning disability.[123] Sometimes, a court will consider disabilities when deciding whether to send your case to

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[116] These rules governing prison conditions are different from the rules discussed earlier in the Chapter, which discussed how the government must follow different rules depending on whether you were convicted under federal or state law. *See* Part B of this Chapter.

[117] U.S. DEPT. OF JUST., JUVENILES IN ADULT PRISONS AND JAILS: A NATIONAL ASSESSMENT 14 (2000), *available at* www.ncjrs.gov/pdffiles1/bja/182503.pdf (last visited Mar. 27, 2024).

[118] 42 U.S.C. § 5633(a)(13); 28 C.F.R § 31.303(d)(1)(i) (2023).

[119] 28 C.F.R. § 31.303(d)(1)(i) (2023).

[120] *See* Horn by Parks v. Madison Cnty. Fiscal Ct., 22 F.3d 653, 658 (6th Cir. 1994) (holding that a violation of the JJDPA creates a § 1983 action for rights protected under the JJDPA); James v. Jones, 148 F.R.D. 196, 199 (W.D. Ky. 1993) (holding that the JJDPA extends enforceable federal rights to young people who are incarcerated); Grenier v. Kennebec County, 748 F. Supp. 908, 913 (D. Me. 1990) (holding that an incarcerated youth could use § 1983 to seek relief for alleged infringement of his rights under JJDPA).

[121] For a detailed description of a § 1983 claim, see *JLM*, Chapter 16, "Using 42 U.S.C. § 1983 to Obtain Relief from Violations of Federal Law." *See also* Doe v. Borough of Clifton Heights, 719 F. Supp. 382, 384 (E.D. Pa. 1989) (requiring showing of deliberate indifference to establish an 8th Amendment challenge), *aff'd*, 902 F.2d 1558 (3d Cir. 1990); Baker v. Hamilton, 345 F. Supp. 345, 352 (W.D. Ky. 1972) (concluding that punitively treating young people as adults and not according them due process violates the 14th Amendment).

[122] *See* Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–1482.

[123] 20 U.S.C. § 1401(26)(A). The IDEA requires that the school develop an individualized education plan ("IEP") every year for children with disabilities to make sure that the child is receiving a free, appropriate public education. The IDEA describes how an IEP is designed and who must be involved in creating it (parents, teachers, etc.). The IEP can include a range of services, from vocational training, transition services and psychological counseling to special tutoring which will assist the student in overcoming learning problems.

Family Court. If your parent or guardian asks, you can get tested for a disability for free (paid for by your home school district) under the IDEA. You can use the information from the test to argue for being treated as a juvenile in court. Talk to your lawyer to find out how this is done because different jurisdictions have different ways to ask for a test.

If you are evaluated and found to have a disability, it is important to tell the court. Some studies say that as many as seventy percent of incarcerated youth suffer from a disability. Some disabilities are invisible. For example, learning or emotional disabilities often lead to problems with other people. Proper evaluation and treatment can make rehabilitation easier, and treatment can also help make education and other programs more helpful.

If you have already been diagnosed with a disability but your previous individualized education program ("IEP") was not followed while you attended school, you should tell your lawyer. For instance, if you were diagnosed with a learning disability and your IEP required you to have a tutor, but your school never gave you a tutor, the school system's failure to follow the IEP could help you explain to the judge why you may have had trouble with rehabilitation programs before. If your lawyer can convince the judge that this is true, you may receive a lighter sentence.

(ii) *Special Education While You are Incarcerated*

If you have a disability, the government must give you free special education until you are twenty-one years old.[124] Anyone in a correctional facility who would normally need special education services outside of prison may also be entitled to receive them during their time in prison.[125] The IDEA applies to almost all the people who would get special education services outside prison.[126] However, there are three exceptions that may apply depending on state law:

(1) In some states, the government does not have to provide public education to people who are three to five years old or eighteen to twenty-one years old. In those states, the prison

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The IDEA lists a number of disabilities that allow students to obtain special services. This list includes: intellectual disability, hearing impairment, speech or language impairment, visual impairment, emotional disturbance, orthopedic impairment, and specific learning disabilities. A "specific learning disability" is defined as a "disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written," and may show itself in an "imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations." 20 U.S.C. § 1401(30)(A); 34 C.F.R. § 300.8(c)(10)(i) (2023). This may include conditions such as perceptual disabilities (disabilities in seeing, hearing, feeling, or in other ways sensing things), brain injury, minimal brain dysfunction, dyslexia and developmental aphasia, but does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage. 20 U.S.C. § 1401(30)(B)–(C); 34 C.F.R. § 300.8(c)(10)(i)–(ii) (2023).

For general information about your rights under the IDEA during incarceration, see SUE BURRELL & LOREN WARBOYS, U.S. DEPT. OF JUSTICE, SPECIAL EDUCATION AND THE JUVENILE JUSTICE SYSTEM (2000), *available at* http://www.ncjrs.gov/pdffiles1/ojjdp/179359.pdf (last visited Mar. 27, 2024).

[124] *See* Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–1482. However, some courts are more willing than others to find that incarcerated youth have a constitutional right to education and treatment. *Compare* Santana v. Collazo, 714 F.2d 1172, 1176–1177 (1st Cir. 1983) (holding that rehabilitative training is desirable but institutionalized young people have no constitutional right to such treatment), *and* Morales v. Turman, 562 F.2d 993, 998 (5th Cir. 1977) (distinguishing between the commitment of the mentally ill and the confinement of youth offenders and rejecting the argument that youth offenders have a comparable constitutional right to treatment), *with* Nelson v. Heyne, 491 F.2d 352, 360 (7th Cir. 1974) (holding that incarcerated youth have a constitutional right to treatment which includes the right to individualized care), *and* Alexander S. v. Boyd, 876 F. Supp. 773, 798 (D.S.C. 1995) (recognizing the right of young people to minimally adequate training, including special education for incarcerated youth).

[125] This claim is somewhat complicated because various states have constitutions or statutes giving their residents a right to an education even if they are not disabled, but there is no federal right to a general education. *See* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35, 93 S. Ct. 1278, 1297, 36 L. Ed. 2d 16, 44 (1973) (holding that education is not afforded explicit constitutional protection).

[126] 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.102(a)(2) (2023).

is not required to provide special education services to incarcerated youth who are three to five years old or eighteen to twenty-one years old;[127]

(2) In some states, the government does not have to provide you with special education or related services if you are eighteen to twenty-one years old and if you were not identified as disabled before going to prison or did not have an IEP at your old school[128] unless you meet select exceptions;[129] or

(3) Even if a state usually provides early intervention services to a child with disabilities, the IDEA does not require a state to provide free special education to that child.[130]

Unless one of the exceptions above applies to you, you are entitled to a free appropriate public education ("FAPE"), even while you are incarcerated. You can request a review if your IEP is not being followed. If your IEP is not being followed or you are not getting FAPE, then you first must try to resolve your problem through administrative methods (contact the state Department of Education to find out more about administrative remedies) and, if that fails, through state court. You can sue in federal court only after administrative and state remedies have failed. The only reason your FAPE can be denied is for prison security. Students and parents also have the right to challenge any changes made to an IEP.

2. New York State Laws Regarding Conditions of Incarceration

Similar to the federal laws explained above, New York state laws keep juveniles separate from adults and provide for the education of juveniles in New York state prisons.

(a) Juveniles and Adults Must Be Separated

The federal law JJDPA also applies to New York state prisons. The JJDPA requires that all states must have sight and sound separation between adults and youth in jails and prisons.[131]

In New York, adulthood begins at age eighteen for the purposes of prosecution,[132] and the JJDPA does not apply if you are a young person but were tried as an adult by the state.[133] As a result, JJDPA sight and sound protections do not apply in New York if you were tried as an adult, even if you were only sixteen.[134]

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[127] 20 U.S.C. § 1412(a)(1)(B)(i) (allowing states to not provide special education to students aged 3–5 and 18–21 if it "would be inconsistent with State law or practice"); 34 C.F.R. § 300.102(a)(1) (2023) (same); *see, e.g.*, Tunstall v. Bergeson, 5 P.3d 691, 706, 141 Wash. 2d 201, 229–230 (Wash. 2000) (holding that the state is not required under the IDEA to provide special education services to students between the ages of 18 and 22 who are in adult prison because doing so would be "inconsistent with state law"), *cert. denied*, 532 U.S. 920, 121 S. Ct. 1356, 149 L. Ed. 2d 286 (2001). *But see* K.L. v. R.I. Bd. of Educ., 907 F.3d 639, 642 (1st Cir. 2018) (interpreting the exception in 20 U.S.C. § 1412(a)(1)(B)(i) to mean that state can deny special education services to entire age groups, not to particular types of students within a certain age group).

[128] 20 U.S.C. § 1412(a)(1)(B)(ii) (allowing states to not provide special education to students aged 18–21 "who, in the educational placement prior to their incarceration in an adult correctional facility . . . were not actually identified as being a child with a disability . . . or . . . did not have an individualized education program"); 34 C.F.R. § 300.102(a)(2)(i) (2023) (same); *see, e.g.*, IDAHO CODE ANN. § 33-2010 (West 2013 & Supp. 2023); KAN. STAT. ANN. § 72-9936 (West 2018); N.H. REV. STAT. ANN. § 194:60(VIII) (West 2018 & Supp. 2023).

[129] 34 C.F.R. § 300.102(a)(2)(ii) (2023) (listing the exceptions to the restrictions in 34 C.F.R. §300.102(a)(2)(i)).

[130] 20 U.S.C. § 1412(a)(1)(C); 34 C.F.R. § 300.102(a)(4) (2023); *see also* 20 U.S.C. § 1419(f)(5) (describing early intervention services); *c.f.* 20 U.S.C. § 1401(9) (describing free special education).

[131] 42 U.S.C. § 5633.

[132] *See* N.Y. CRIM. PROC. LAW § 510.15 (McKinney 2009) (effective on December 1, 2019, 16- and 17-year-olds charged with misdemeanors are considered juveniles and will have cases decided in the Family Court; 16- and 17-year-olds charged with traffic misdemeanors are considered adults and will have cases decided in the local criminal court; 16- and 17-year-olds charged with felonies are considered adolescent offenders ("AOs"), and their cases begin in the Youth Part of the Supreme or County Court).

[133] *See* N.Y. CRIM. PROC. LAW § 510.15 (McKinney 2009).

[134] Individuals who are 16 and 17 years old must be separated from those 18 and older in county correctional facilities. N.Y. CORRECT. LAW § 500-b (McKinney 2014). State regulations require separate housing for individuals in this age range. N.Y. COMP. CODES R. & REGS. tit. 9, § 7013.4 (2024).

If you were tried as a juvenile and are not being separated from the adults in your prison or lock-up, you can sue under Section 1983.[135] If you bring a lawsuit, you must direct it against the state or local agency rather than the police or corrections officers.

There are some special protections for juvenile offenders ("JOs") in New York. Remember, JOs are technically classified as different from juveniles. JOs are kept in juvenile facilities before they reach the age of eighteen.[136] Under New York law, these separate facilities should have services that are more appropriate for juveniles than the services in adult prisons.[137]

(i) *Rules for Transferring from a Juvenile Offender to an Adult Facility*

There are some circumstances where you can be transferred to adult Department of Corrections and Community Supervision ("DOCCS") facilities if you are a juvenile offender between the ages of sixteen and twenty-one.[138] First, you may be transferred if there is no substantial likelihood that you will benefit from the programs offered by juvenile offender facilities.[139] Second, there are rules called "transfer guidelines" that provide possible reasons why you may be transferred to an adult facility.[140] For example, you may be transferred if you are a danger to yourself or others, if you refuse to participate in programs, if you are in possession of any contraband (things you are not allowed to have in prison), or if you violate parole.[141]

There are three rules that New York must follow in deciding whether to transfer you to a DOCCS facility. First, if you are older than twenty-one, you must be transferred to a DOCCS facility.

Second, if you are older than eighteen but younger than twenty-one, you can be transferred to a DOCCS facility by the Office of Children and Family Services ("OCFS") Commissioner.[142] OCFS is required to explain its reasons for transfer, and the director of the division must review these reasons and issue a "certification," or authorization, to DOCCS.[143] However, if it is "necessary to ensure the health and safety of [other] individuals" in your facility and if you are a juvenile offender eighteen years of age or older, you can be transferred to DOCCS facilities with only a verbal certification.[144] In this situation, OCFS is not required to provide a written certification, but it must submit written confirmation and reasons for the quicker transfer within one business day after the transfer occurs.[145] You can ask for a copy of your transfer documents any time within seven days after you are transferred. You also have the right to appeal in writing within thirty days after you are transferred.[146] The director of the division must decide on your written appeal within ten days of receiving it.[147] You can also ask a court to review these decisions by filing an Article 78 petition.[148]

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[135] For a detailed description of a § 1983 claim, see *JLM*, Chapter 16, "Using 42 U.S.C. § 1983 to Obtain Relief from Violations of Federal Law."

[136] N.Y. CRIM. PROC. LAW § 510.15 (McKinney 2009); *see also* 83 N.Y. JUR. 2d *Penal and Correctional Institutions* § 64 (West 2021) ("The Office of Children and Family Services (OCFS) must maintain secure facilities for the care and confinement of juvenile offenders. . . . The OCFS may apply to the sentencing court for permission to transfer a youth not less than 16 nor more than 18 years of age to the Department of Corrections.").

[137] N.Y. EXEC. LAW § 508(1) (McKinney 2020).

[138] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.2 (2024).

[139] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.2 (2024).

[140] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.3 (2024).

[141] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.3 (2024).

[142] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.2 (2024).

[143] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.4 (2024).

[144] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.5 (2024).

[145] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.5 (2024).

[146] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.7(a)–(b) (2024).

[147] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.7(c) (2024).

[148] See *JLM*, Chapter 22, "How to Challenge Administrative Decisions Using Article 78 of the New York Civil Practice Law and Rules," for more information about Article 78 proceedings.

Third, sixteen- and seventeen-year-olds can be transferred to a DOCCS facility when it is unlikely that the young person will benefit from the services of the Division of Youth Development and Partnerships for Success.[149] If you are sixteen or seventeen, you can only be transferred to a DOCCS facility after both the deputy director for residential services and the director of the division have reviewed the reasons given for the need for transfer, and the director has determined that you should be transferred.[150] The director must decide whether to transfer you within five business days of receiving the documents about your transfer, and you must be told within seven days of the decision.[151]

The OCFS oversees all detention facilities for incarcerated youth in New York State.[152] In New York City, the Administration for Children's Services runs juvenile pre-trial facilities.[153] You can use the OCFS and Administration for Children's Services websites (provided in the footnotes below) to find the addresses, visiting hours, and regulations of detention centers, as well as annual reports and other information.

(b) Your Right to an Education under New York State Law

Incarcerated youth in New York have rights to education in addition to those provided by IDEA under federal law. First, the New York Constitution guarantees all children an education.[154] This means that you have a right to an education until your twenty-first birthday, including while in prison and pre-trial detention, until you earn a high school diploma or an equivalent degree (such as a GED).[155] This applies whether or not you have a disability. Second, DOCCS has a policy goal that all incarcerated people receive a high school diploma or its equivalent.[156]

All incarcerated youth should be offered at least three hours of daily instruction, five days per week, by qualified teachers in an environment that facilitates learning.[157]

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[149] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.2 (2024).

[150] N.Y. COMP. CODES R. & REGS. tit. 9, § 175-4.6(a)–(c) (2024).

[151] N.Y. COMP. CODES R. & REGS. TIT. 9, § 175-4.6(c)–(e) (2024).

[152] Information about the OCFS (for New York State) is available online at https://ocfs.ny.gov/main/ (last visited Mar. 27, 2024).

[153] Information about the Administration for Children's Services' juvenile justice services is available online at https://www1.nyc.gov/site/acs/justice/juvenile-justice.page (last visited Mar. 27, 2024).

[154] N.Y. CONST. art. XI, § 1; *see* Mitchell C. v. Bd. of Educ. of City Sch. Dist. of City of N.Y., 67 A.D.2d 284, 288, 414 N.Y.S.2d 923 (2d Dept. 1979) ("[W]here a State or subdivision thereof undertakes to provide free education to all its students, it must recognize an individual student's legitimate entitlement to a public education as a property interest protected by the due process clause." (citation omitted)).

[155] N.Y. EDUC. LAW § 3202 (McKinney 2023) ("A person over five and under twenty-one years of age who has not received a high school diploma is entitled to attend the public schools maintained in the district in which such person resides without the payment of tuition."); *see also* N.Y. COMP. CODES R. & REGS. tit. 9, § 7070.2 (2024); Mitchell C. v. Bd. of Educ. of City Sch. Dist. of City of N.Y., 67 A.D.2d 284, 288, 414 N.Y.S.2d 923, 926 (2d Dept. 1979).

[156] State of New York, Department of Corrections and Community Supervision, Directive No. 4804, Academic Education Program Policies § I (2023), *available at* http://www.doccs.ny.gov/Directives/4804.pdf (last visited Mar. 27, 2024). In addition, incarcerated people can be sanctioned if they have not obtained a diploma or its equivalent and have reading or math skills below a 9.0 level. According to Directive #4804, incarcerated people can be denied good behavior allowances under N.Y. CORRECT. LAW § 803 (McKinney 2014). State of New York, Department of Corrections and Community Supervision, Directive No. 4804, Academic Education Program Policies § VII(C) (2023), *available at* http://www.doccs.ny.gov/Directives/4804.pdf (last visited Mar. 27, 2024).

[157] The regulations in New York require: (1) instruction on the same days it is available in the local school district; (2) not less than three hours a day of schooling; and (3) that the instruction shall begin within eleven days of the district's receipt of your request for educational services. N.Y. COMP. CODES R. & REGS. tit. 8, § 118.4 (2024); *see also* N.Y. COMP. CODES R. & REGS. tit. 9, § 7070.6 (2024).

If you are not receiving the kind of education described above, you may request it.[158] In New York City, the court has upheld the right of incarcerated people to access special education.[159] If you request an evaluation for special education in New York, the evaluation must be made within ten school days following receipt of your request.[160] Recommendations for your education must be made within twenty days of receiving your request.[161] However, this only applies if you have not been evaluated within the last three years.[162] If you have been evaluated within the last three years, that evaluation can be used instead of a new one.[163]

E. Conclusion

If you are a young person who is considered a "juvenile," "juvenile offender," or "youthful offender," federal laws and New York state laws give you various rights and protections with respect to the legal process and the conditions of your incarceration. To receive these protections, you must first make sure that you meet the eligibility requirements described above. Then, speak with your lawyer about the next steps to take, including a possible appeal of your case or bringing a separate lawsuit if your rights have been violated.

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158 N.Y. COMP. CODES R. & REGS. tit. 9, § 7070.4(f) (2024); N.Y. COMP. CODES R. & REGS. tit. 8, § 118.5 (2024) ("Within 10 days after admission . . . youth shall be apprised . . . of the availability of educational services. If the youth requests, the correctional facility shall submit a request for such educational services to the school district in which the facility is located, which request shall include, but need not be limited to, the following information: (a) the youth's name; (b) the name and location of the facility; (c) the last school grade completed by the youth as indicated by the youth; (d) the anticipated duration of the incarceration; and (e) the address of the last known residence of the youth at the time of the child's commitment to custody.").

159 Handberry v. Thompson, 92 F. Supp. 2d 244, 245–249 (S.D.N.Y. 2000) (finding that incarcerated people ages 16–21 without high school degrees were denied special education services, in violation of the IDEA, and general education services, in violation of New York State law, and ordering DOCCS to find a way to make sure that the rights of incarcerated people are respected and that they receive the education they deserve), *judgment limited by* 446 F.3d 335, 356 (2d Cir. 2006) (vacating the decision of the district court insofar as the decision was based on state law, was excessively burdensome, violated the parental consent provision of the IDEA, and made little sense within the context of prison regulation).

160 N.Y. COMP. CODES R. & REGS. tit. 8, § 118.3(a) (2024).

161 N.Y. COMP. CODES R. & REGS. tit. 8, § 118.3(a) (2024).

162 N.Y. COMP. CODES R. & REGS. tit. 8, § 118.3(b) (2024).

163 N.Y. COMP. CODES R. & REGS. tit. 8, § 118.3(b) (2024).

Appendix A

GLOSSARY OF LEGAL TERMS[164]

Appeal: When a person asks a higher court to review the decision made in his case by a lower court with the hope that the higher court will find mistakes and overturn that decision.

Arraignment: When someone who has been accused of a crime is brought to court for the first time. This is when the court (i) tells you what crime you are being accused of and (ii) asks you to enter an initial or first plea of "guilty," "not guilty," or "no contest."

Burden of proof: The level of proof the prosecutor must reach for a person to be convicted or found delinquent. In a criminal case, the burden of proof is "beyond a reasonable doubt," which means that no juror or judge should have any reasonable doubt that the person being tried is actually guilty. If the jury has a reason to believe the defendant did not commit the crime, then it must find him not guilty.

Defense Attorney: The person who defends you in court is called a defense attorney. You are entitled to have a defense attorney in a criminal trial where you are at risk of going to jail or being committed to an institution.[165] If your family is unable or refuses to hire an attorney to defend you, the court will assign you an attorney, often known as a public defender or "legal aid." When the court assigns you a lawyer, make sure you write down his name, telephone number, and license number so you can contact him when you need him.

District Attorney: The lawyer who represents the government in criminal trials; see "prosecutor."

Guardian *ad litem*: Depending on the type of case, a guardian *ad litem* can mean different things. Usually, in the criminal and delinquency courts, if you do not have parents or guardians who can help you or if your parents' interests are different from yours, the court will choose someone to be your guardian for the purpose of your trial and/or proceedings. This is especially true in the federal system.[166] This person will usually be a lawyer, but if you are in foster care, it might be your social worker or someone else who is very familiar with your case.

Incarcerate: To order that a person be placed in a prison or other lock-down facility for a period of time. If you are "incarcerated," it means that you are in prison.

Indictment: A formal document written by a grand jury accusing someone of a crime. It is presented to the court as the reason for prosecuting someone.

Jurisdiction: Jurisdiction has two separate definitions. First, it is the power of a court to decide a case. If a court has the power to decide your case, we say the court has "jurisdiction." Second, it is a geographic area in which a court may exercise its power to decide a case. For example, New York and New Jersey are different "jurisdictions" because only New York courts have the authority to decide cases brought in New York.

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[164] All definitions are adapted and paraphrased from those listed in BLACK'S LAW DICTIONARY (11th ed. 2019).

[165] The Supreme Court has said: "We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child." *In re* Gault, 387 U.S. 1, 41, 87 S. Ct. 1428, 1451, 18 L. Ed. 2d 527 (1967).

[166] 18 U.S.C. § 5034.

Plea bargain: When the accused person makes an agreement with the prosecutor to plead guilty to a lesser crime in exchange for the possibility of a lower sentence. When you accept a plea bargain, you give up your right to a trial.

Prosecutor: The attorney who works for the state or federal government and is in charge of preparing the case against you. Prosecutors usually work for the District Attorney in the state system or the U.S. Attorney in the federal system. Your lawyer and/or parent/guardian should be with you whenever you speak to the prosecutor. You have a right to have your lawyer present to help you with any questions that the prosecutor may ask. If your lawyer is not present for a meeting, you have the right to ask for your lawyer and the right not to speak to the prosecutor until your lawyer arrives.

Transfer: When your case is moved to a different court. In order to be tried as an adult, your case must be transferred to criminal court and must meet the rules or requirements for transfer.

Trial: When the court formally examines the evidence and legal claims brought by the prosecutor against the accused person.

"Waive your right": If you waive a legal right, it means you voluntarily give it up. Some rights are not waivable. To waive a right, you must know the facts and intend to give up the right. Otherwise, the waiver will not be valid.

Vacate: When a court of appeals cancels a decision that was made by a lower court. Once the court vacates a decision, it might make its own decision or send the case back to the lower court to review the case again. Sending the case back to the lower court is called "remanding."