Area prosecutors, officials discuss Gov. Cuomo’s ‘Raise the Age’ proposal

By Ariel Zangla, Daily Freeman

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KINGSTON >> Gov. Cuomo’s proposal to “Raise the Age” of criminal responsibility for youth has raised concerns amongst some local prosecutors, especially since they said the legislation would take authority from elected district attorneys over how certain cases for defendants under the age of 18 are handled in court.

And while “Raise the Age” was originally tied to the adoption of the state’s 2015-16 budget, those concerned with the proposal said they are happy it was removed from the spending plan and would be given more review.

Ulster County District Attorney Holley Carnright said he is following the governor’s proposal very closely.

“I don’t think it’s gone,” Carnright said recently. “I think it was just pulled from the budget.” He said once the state presents a separate bill for the “Raise the Age” proposal it would not have the same time constraints as it would have otherwise had if it remained in the budget. Carnright said that would afford the District Attorneys Association of the state of New York more time to review the proposal and make comment.

“No good DA wants to harness a young man or a young woman with a criminal history who doesn’t deserve that treatment,” Carnright said. He added that the governor’s proposal “is such a sweeping change that most people don’t understand it. It’s not a simple, ‘Let’s make a couple of changes.’ It’s modified the Family Court Act, it’s modified the criminal procedure. It’s setting up new judiciary rules. It has to do with DOCCS (state Department of Corrections and Community Supervision). It’s huge.”

Carnright said the governor’s proposed legislation was 166 pages long and has an amendment that is nearly as long. He added that if changes such as the ones proposed are going to be implemented, they should be based upon facts and “not platitudes.”
The statement that New York is one of two states who prosecute 16- and 17-year-olds as adults is a platitude, Carnright said. He said most young offenders in Ulster County actually end up with sealed records through youthful offender adjudication or by having their cases adjourned in contemplation of dismissal.

If these youths are already having their records sealed and are not being prosecuted as adults, then the proposed legislation will not change anything, Carnright said.

“No one is objecting to the proposal of juvenile justice reform,” Dutchess County District Attorney William Grady said. “It’s just that under its present form, very serious questions are raised, which should be addressed before anything is finalized.”

**Youthful offender status**

Gov. Andrew Cuomo’s originally proposed reforms to the juvenile justice system would, in addition to raising the age under which teenagers could be charged as adults, increase the age for youthful offender status; require that 16- and 17-year-olds serve prison sentences in Office of Children and Family Services detention facilities rather than prisons; and move the prosecution of youths for most felonies, as well as all misdemeanors and violations, from criminal courts to family courts, and in many instances, have those cases dealt with by probation departments.

The law also would change the sentencing guidelines for certain felonies – reducing, for instance, the maximum sentence for a 17-year-old convicted of a Class B violent felony like rape to between one and seven years in prison.

Grady said the District Attorneys Association of the state of New York identified 38 different concerns it had with the proposal as outlined. He said he hoped those concerns could now be addressed in a meaningful way.

Both Grady and Carnright said they were, for instance, concerned with the proposed legislation allowing many cases involving young offenders to be sent to a Family Court without the review or approval of the elected district attorney. Carnright added that these cases would be overseen by probation officers who have no legal background. Those officers would determine whether the case is even prosecuted in family court, he said, adding that there would be no record of the young person’s offense. Carnright also said if the case is actually prosecuted in family court, it would be handled by a county attorney rather than a district attorney. That county attorney may not have a criminal law background, he said.

“Certainly there’s a category of serious violent felony offenders in that age group, which do not warrant the consideration of their cases being handled in family court,” Grady said. He added that another concern he has is with the uncertainty as to where any young person who is convicted of a serious violent offense would serve their sentence. Grady said a young person who is part of a gang and has been convicted of a serious violent felony does not belong in a nonsecure group home for youth.

**Family vs. criminal court**
Additionally, Carnright said family courts are very different from criminal courts because family court judges are charged with considering only what is in the best interest of the child. In criminal courts, what is in the best interest of the child is considered, but so is public safety, what is in the best interest of the victim, and what the impact was on the community, he said.

“The concern behind the bill is something that I think every good DA is already concerned with and is already dealing with,” Carnright said. He said those district attorneys are already concerned with the best way to treat young offenders.

Carnright added that under the current system, district attorneys across the state are answerable to the public that elects them to office.

“There’s accountability right now,” Carnright said. “I think accountability is really important in the justice system.” If the public does not like the job the district attorney is doing, they can vote that person out of office, he said.

Frank Sedita, the Erie County District Attorney and president of the District Attorneys Association of the state of New York, said from his organization’s perspective “there are multiple problems” with the “Raise the Age” proposal. He said, like Carnright and Grady, he did not believe most district attorneys oppose the concept of raising the age of criminal responsibility.

In a letter to state officials, though, Sedita said the “legislation’s proposed treatment of 16- and 17-year-old offenders who commit violent felonies and serious but non-violent felonies changes the law to such an extent that serious questions are raised regarding fundamental criminal justice issues, including offender accountability, victim’s rights and public safety.”

Sedita said the proposed statute is extremely complex and difficult to understand. He said the District Attorneys Association has tasked 12 assistant district attorneys with reviewing the proposal to try to understand its components. Sedita added that he always felt the criminal law should be simple and straightforward for all people to understand. And everyone should know that if they are convicted of certain crimes, there are a certain set of punishments, he said. Sedita said when reading the governor’s proposal, though, some of it is very complex and “almost Byzantine” in the way it is written.

“We’re concerned about the consequences of it, particularly as it pertains to public safety,” Sedita said. He added that a justification for the proposal has been the claim that 16- and 17-year-old brains are not fully developed. Sedita said 16- and 17-year-olds do, however, know that it is both morally and legally wrong to commit certain criminal offenses such as murder, sexual assault or armed robbery. He said those kinds of cases need to remain in adult criminal court, not Family Court. Sedita also said prosecutors understand that 16- and 17-year-olds lack impulse control and that is why so many cases end up with sealed records from adjournments in contemplation of dismissal, youth offender rulings, or reductions in the type of crime the teen is charged with.

Not a simple issue

State Assemblyman Peter Lopez, R-Schoharie, said that in addition to looking at the governor’s proposal, he hoped consideration would be given to the root causes for young people committing crimes.

“This issue is just highly complex,” Lopez said. He said when dealing with young people, no one wants to see them caught up in situations
where they are brought to these “heart-breaking situations of extreme criminal activity and violence.” Lopez said in addition to looking at the root causes for young people committing crimes, he also wanted the state to look at what mechanisms are available to help them understand their accountability. He said he also wanted to make sure there were paths to redemption once youth convicted of a crime have served their sentence.

Lopez said he was happy the proposal was removed from the state budget to provide more time to consider the legislation.

Prior to the proposal being removed, state Senator George Amedore said he felt the “Raise the Age” legislation needed to be properly vetted outside of the budget process.

“We need to ensure safety in our communities and make sure sentencing guidelines for the most violent crimes are not reduced,” Amedore, R-Rotterdam, said.


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