



Under what circumstances may the People oppose a removal of criminal charges against an adolescent from a trial court to Family Court under New York's Raise the Age legislation? The Court of Appeals recently addressed that question, holding that the determination of whether extraordinary circumstances exist to warrant denying presumptive removal is up to the trial court's discretion, and will be reviewed only for abuse. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

## COURT OF APPEALS

### CRIMINAL LAW, RAISE THE AGE

*People v Guerrero*, 2026 NY Slip Op 00826 (Ct App Feb. 17, 2026)

**Issue:** Did the youth part of County Court abuse its discretion as a matter of law in granting the People's motion to prevent removal of the criminal charges against the defendant, a 17-year-old, to Family Court under New York's Raise the Age legislation?

**Facts:** "Defendant, four months shy of his 18th birthday, participated in a premeditated, armed home invasion, the latest transgression in a pattern of escalating criminal behavior for which he had been receiving services in Family Court for approximately five years. The grand jury jointly indicted defendant and his accomplices on two counts of burglary in the first degree and one count of robbery in the first degree. Under the State's Raise the Age legislation, defendant's prosecution was presumptively removable from the youth part of County Court to Family Court." The People, however, moved to prevent removal, arguing that "extraordinary circumstances" existed that made removal to Family Court inappropriate—particularly, that during the premeditated attack, the defendant and his accomplices, armed with knives and a handgun, broke into the victim's home, seized him, and took the victim's shotgun and beat him with it. Defendant opposed, "asserting that he was diagnosed with bipolar disorder, schizophrenia, attention deficit hyperactivity disorder, and oppositional defiant disorder, conditions for which he was prescribed medication and received weekly therapy."

Following a hearing at which the People presented evidence of defendant's "escalating pattern of criminal behavior despite having received Family Court services for the past five years," County Court granted the motion to prevent removal. "Although the court found that defendant and his accomplices entered the victim's home with the intent to commit a robbery and, during the course of the robbery, struck the victim several times in the face with a shotgun, the court noted further that the violent nature of the alleged crimes was not by itself a basis for preventing removal on the ground of extraordinary circumstances. Rather, the court opined that it was also required to consider whether defendant was amenable to Family Court services. In that regard, the court found that defendant had several mental health diagnoses but, at the same time, had been receiving services for five years. Based on those considerations, the court concluded that the People had demonstrated extraordinary circumstances sufficient for the case to remain in the youth part."

Defendant was convicted following trial, and the Appellate Division, Fourth Department affirmed, holding that County Court did not abuse its discretion in preventing removal under the Raise the Age legislation.

**Holding:** The Court of Appeals affirmed, explaining that "[u]nder the Raise the Age legislation, cases involving adolescent offenders—defined in effect as persons charged with committing a felony at 16 or 17 years old—are presumptively removed from the newly created youth part of superior court to Family Court. Where, however, a defendant is charged with a violent felony as defined in Penal Law § 70.02, the youth part retains the case upon a determination that the defendant (i) 'caused significant physical injury to a person other than a participant in the offense'; (ii) 'displayed a firearm, shotgun, rifle or deadly weapon' in furtherance of the offense; or (iii) engaged in certain unlawful sexual conduct. Otherwise, the case is removed to Family Court unless, upon a motion by the People, the youth part determines that extraordinary circumstances exist that should prevent the transfer of the action to Family Court." The decision to grant or deny such a motion is reviewed only for abuse of discretion.

Noting that the Raise the Age legislation "does not define extraordinary circumstances, in contrast to other statutes where the legislature has provided explicit guidance about what constitutes extraordinary circumstances in other contexts," the Court held that that left the "extraordinary circumstances determination within the broad discretion of the court." As the legislative sponsor noted, the intent was for the trial court to use its "judicial discretion" and make an "individualized determination" based on "all the circumstances of the case, as well as the circumstances of the young defendant."

Here, the Court held, County Court properly looked at those circumstances and determined that this case involved the kinds of extraordinary circumstances that warranted retaining the case in the youth part. "Defendant was no stranger to the criminal justice system. Since

age 13, he had been arrested repeatedly, was frequently in Family Court, and had received many services [over a period of five years that were intended to assist him in leading a law-abiding life. It is undisputed that, despite those services, his criminal behavior escalated to the point that only a month after receiving a Family Court appearance ticket for unauthorized use of a motor vehicle, he participated in a preplanned home invasion in which he displayed a knife and where his accomplices' conduct in displaying firearms would have mandated retention of the case by the youth part if defendant had done so himself. To be sure, defendant's mental health is a substantial mitigating factor, and the alternative conclusion would not have been unreasonable. That is, the court could have found it appropriate for the case to be removed so defendant could continue to receive Family Court services. But we cannot say that the court, after weighing the considerable aggravating and mitigating factors here, abused its discretion as a matter of law in determining that extraordinary circumstances exist that should prevent removal to Family Court."

## CRIMINAL LAW, DWI, DWAI

*People v Dondorfer*, 2026 NY Slip Op 00823 (Ct App Feb. 17, 2026)

**Issue:** Does the definition of impairment for purposes of driving while ability impaired by a combination of drugs and alcohol have the same meaning as the Court of Appeals has given it for the offense of driving while ability impaired solely by alcohol?

**Facts:** "After the car he was driving with his fifteen-year-old daughter as a passenger was stopped by police, defendant admitted to drinking 'a couple of strong beers' and smoking marijuana. He failed several standard field sobriety tests, and an officer certified as a drug recognition expert determined, based on a 12-step evaluation, that defendant was impaired by the combination of alcohol and cannabis and was unable to safely operate a vehicle. The People presented an indictment to the grand jury charging defendant with aggravated driving while ability impaired by a combination of drugs and alcohol with a child in the vehicle." When defining the offense for the grand jury, the People defined "impairment" for DWAI by a combination of drugs and alcohol as "when that combination of alcohol and drugs has actually impaired, to any extent, the physical and mental abilities which such person is expected to possess in order to operate a motor vehicle as a reasonable and prudent driver," consistent with the Court of Appeals' definition of "impairment" for the alcohol-based offense (see *People v Cruz*, 48 NY2d 419, 427-428 [1979]).

At a pre-trial hearing, however, County Court granted the defendant's request to use a different charge on impairment derived from the Third Department's subsequent decision in *People v Caden N.*, in which "the Third Department held that Cruz's definition of impairment applied only 'in the limited context' of driving while ability impaired by alcohol and instead defined impairment for drug consumption in accordance with the *Cruz* standard for alcohol intoxication (189 AD3d 84, 90-91 [3d Dept 2020])." County Court held that the People's charge prevented the grand jury from determining whether legally sufficient evidence existed to support the offense, and thus dismissed that count of the indictment.

The Appellate Division, Fourth Department reversed, however, "declined to follow *Caden N.*" because it was "unsupported by the statutory text and was inconsistent with the *Cruz* decision," and held instead that "the term 'impaired' as used in Vehicle and Traffic Law § 1192 (4-a) should be defined consistently with the definition of that same term set out by the Court [of Appeals] in *Cruz* and concluded that the People properly instructed the grand jury in accordance with *Cruz*'s impairment standard."

**Holding:** The Court of Appeals affirmed, holding that "the subdivision at issue here, Vehicle and Traffic Law § 1192 (4-a), and the subdivision at issue in *Cruz*, Vehicle and Traffic Law § 1192 (1), use the term 'impaired.' Nothing in the statutory language itself indicates that a different meaning was intended for subdivision (4-a). We must therefore presume that the Legislature meant for these identical terms to be used in the same sense throughout the same statute. As the Appellate Division below explained, in light of the separate definitions given to the terms 'impaired' and 'intoxication,' by using the term 'impaired' in Vehicle and Traffic Law § 1192 (4-a), the legislature clearly did not intend for that term to be defined in accordance with the standard used for the term 'intoxication' . . . Accepting defendant's proposed construction of impairment would require the Court to interpret 'impaired' as having two definitions within the same statute: one applicable to consumption of alcohol alone, and one that essentially incorporates the standard for 'intoxication' by alcohol consumption, to be applied to the use of drugs or drugs and alcohol combined. This we cannot do."

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