

**NOTICE OF MOTION TO FIND CPL § 720.10(1) UNCONSTITUTIONAL AND
CLIENT A “YOUTH ” UNDER THAT SUBDIVISION.**

CAPTION

PLEASE TAKE NOTICE, that, upon the annexed affirmation and memorandum of law, and the prior papers and proceedings herein, the undersigned will move this Court at Part ____, to be held at the Courthouse at ____, on _____, 20__, at _____, or as soon thereafter as counsel can be heard, for an order finding CPL § 720.10(1) unconstitutional in violation of art. I, § 11(a) of the New York State Constitution on the grand that the age classification in CPL § 720.10(1), by excluding individuals more than 19 years old and under 26 years old, violates equal protection under the State Constitution, and further finding defendant, who was __ years old on the date of the offense’s commission, a “youth,” potentially eligible for YO adjudication, and for such other and further relief as this Court may deem just and proper.

Dated: _____
_____, New York

Your name
Attorney for Defendant
Address and tel. Number
Email address

TO: [Parties to be served]

AFFIRMATION IN SUPPORT

CAPTION

[Your name], being duly admitted to practice in the Courts of this State, hereby affirms under the penalties of perjury that the following statements are true, except those made on information and belief which s/he believes to be true:

1. I am the attorney for [client name] and am personally familiar with the facts stated herein.

2. *[give procedural history — date of incident; date of arrest ; date complaint (felony or misdemeanor) was filed and charges it contained; date of any indictment filed and charges it contained; status of case now].*

3. [Client] was born on ____ and was ___ years old on the date of the charged crime(s).

4. This affirmation is made in support of [client's] motion asking this Court to find that CPL § 720.10(1) violates art. I, § 11(a) of the N.Y. State Constitution, the state constitution's equal protection provision, insofar as it limits eligibility for youthful offender to persons "less than nineteen years" while excluding individuals under 26 who, as the current neuroscience shows, are similarly situated in terms of their reduced culpability and tremendous capacity for change. As such, people aged 19 through 25 should be afforded access to the same protection as individuals under 19.

5. Since, as of January 2025, "age" is an expressly protected class under art. I, § 11(a), this Court must apply heightened scrutiny to its review of CPL § 720.10(1)'s age classification. As further discussed in the accompanying memorandum, the statute's exclusion of individuals under 26 cannot survive either strict scrutiny or intermediate scrutiny and must be found fatally underinclusive.

6. But for his age, [client] would be eligible to be adjudicated a youthful offender. See CPL § 720.10(2), (3). *[NB. Include subdivision (3) if your client was convicted of an armed felony where he could still be found eligible]. [Set forth facts establishing YO eligibility].*

7. The remedy for CPL § 720.10(1)'s underinclusiveness is for this Court to find [client] YO eligible.

8. No previous motion has been made for the relief requested herein.

WHEREFORE, [client] requests that this Court find CPL § 720.10(1) unconstitutional in violation of art. I, § 11(a) of the New York State Constitution, remedy the violation by extending the definition of “youth” to include those “at least sixteen years old and less than twenty-six years old,” and finding [client] a “youth” for purposes of youthful offender eligibility, or, in the alternative, for a hearing, and for such other and further relief as this Court deems just and proper.

Your Name

Dated: