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New York State Budget Hearing:
Testimony of
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Regarding the New York State Executive Budget Proposals
State Fiscal Year 2015-2016

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New York State Senate Finance Committee
and
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Introduction

My name is Soffiyah Elijah. I am the Executive Director of the Correctional Association of New York and an attorney who previously worked in both Family and criminal court. I also served as co-chair of the Governor's Commission on Youth, Public Safety and Justice.

The Correctional Association of New York is an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the New York State Legislature to inspect prisons and report its findings and recommendations to the legislature, the public and the press. Through monitoring, research, public education and policy recommendations, the Correctional Association strives to make the administration of justice in New York State more fair, efficient and humane. The Correctional Association does not provide direct services other than leadership training programs and does not engage in litigation or represent a sector or workforce. Our unique access to New York State's prisons combined with our policy and legislative expertise inform our perspective today.

I would like to thank Chairman Farrell, Chairman DeFrancisco, and members of the Assembly Ways and Means and Senate Finance Committees for holding this hearing on the Public Protection related proposals in the Governor's Executive Budget for State Fiscal Year 2015-2016. We value the opportunity to discuss these important proposals, and look forward to working with you this session.

My testimony will primarily focus on the portions of the budget impacting the treatment of young people in in New York's criminal and youth justice systems. Following this portion of the testimony, I will provide separate additional analysis related to the Department of Corrections and Community Supervision (DOCCS) proposed FY 2015-2016 budget.

YOUNG PEOPLE IN NEW YORK'S CRIMINAL AND YOUTH JUSTICE SYSTEMS

Background

New York is one of two states that automatically prosecutes 16- and 17-year-olds as adults in the criminal justice system. There are zero exceptions, even for minor offenses. The adult criminal justice system generally fails to provide young people with the kinds of rigorous rehabilitative services proven to increase public safety. And youth in the adult criminal justice system can receive lifelong criminal records, forever impacting their employment, education and housing prospects- each of which are key to successful community re-entry and reducing recidivism. New York also houses 16- and 17-year-olds in adult jails and prisons, where they face rape, sexual and physical abuse, and are at elevated risk of suicide. Kids in adult jails and prisons generally do not receive rehabilitation, negatively impacting public safety. And all of these harms are disproportionately born by Black and Latino children.

New York's current law is not smart on crime. Scientific evidence and other states' experiences prove that prosecuting kids as adults increases crime, including violent crime.[1] A study

[1] Robert Hahn, Angela McGowan, Akiva Liberman et al., "Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review,"

comparing youth charged in New York's adult courts with youth charged with identical crimes in New Jersey's juvenile courts found New York youth were 100% more likely to re-offend with a violent offense and 26% more likely to be reincarcerated.[2] When Connecticut moved the majority of the cases of 16- and 17-year-olds out of adult court, arrests plummeted, including for violent crime.[3] States across the nation have raised the age of criminal responsibility (the age at which children can be prosecuted as adults), and have seen positive results.

From a public safety perspective, prosecuting youth in Family Court is preferable to doing so in adult criminal court. Family Court is based on rehabilitative interventions that hold kids accountable while helping them change their behavior- the end goal of any public safety intervention. And ensuring that detained and incarcerated youth are housed only with other youth and receive age-appropriate rehabilitation while serving their sentences are other sound ways to reduce recidivism while helping young people. Handling the cases of young people in Family Court also improves positive outcomes for youth, families, and communities, and ensures that taxpayer dollars are used to fund what works.

The Governor's Commission on Youth, Public Safety and Justice included a Chief of Police, a Sheriff, two District Attorneys, a judge, and a County Executive. The Commission also included representatives from the advocacy community, probation, the court system, the service provider field, and other stakeholders. We were tasked with reviewing the science on what works and proposing concrete, actionable recommendations to improve public safety and outcomes for young people in New York's criminal and juvenile justice systems.

There are many models for raising a state's age of criminal responsibility. The Commission carefully studied them all and recommended the one that is best for public safety. Our recommendations were unanimous, which speaks to their balanced approach. The system reform we propose is designed to maximize positive outcomes and change young people's behaviors and life trajectories. It is also designed to ensure that tax dollars are well spent on the kinds of interventions proven to work.

In sum, our recommendations- which the Governor adopted in his Proposed Executive Budget- would move most, but not all, cases of 16- and 17-year-olds to Family Court, with cases for serious violent crimes beginning in adult court. Certain more serious cases would remain in adult criminal court, where they would be heard in specialized "Youth Parts" by judges who have received special training in working with youth.

Department of Health and Human Services, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, November 30, 2007 / Vol. 56 / No. RR-9; Office of Juvenile Justice and Delinquency Prevention, Richard E. Redding, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?" (June 2010), https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf; Jeffrey Fagan, Aaron Kupchick and Akiva Liberman, "Be careful what you wish for: The comparative impacts of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders," Columbia Law School, Pub. Law Research Paper No. 03-61, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=491202.

[2] *Id.* (Fagan, Kupchick and Liberman).

[3] Justice Policy Institute, Juvenile Justice Reform in Connecticut 3, 16 (2013), available at http://towfoundation.org/wp-content/uploads/2013/03/JPI_JJ-Reform-in-CT_pre-press.pdf.

Concrete recommendations would also improve the Family Court system so that it can best match youth to appropriate services and interventions.

Under our recommendations, no youth arrested before age 18 would be housed in an adult jail or prison- a change that would both keep kids safe and improve public safety by reducing reoffending.

The Commission's recommendations are pragmatic, middle of the road, and bi-partisan. There is no magic potion for public safety, but there is a lot of solid research about what works. Raising the age of criminal responsibility is good for public safety and, therefore, good for all New Yorkers.

What follows is a short summary of the major recommendations for reform, as initially recommended by the Commission and subsequently included in the Proposed Executive Budget, accompanied by an explanation of each recommendation's potential impact. The Correctional Association's analysis is based on the proposals contained in the Proposed Executive Budget, and do not reflect any amendments that may have been issued since.

Taken together, the full set of proposals based on the Commission's research and included in the Executive Budget lays out a roadmap to make the justice system for young people more effective and cost-efficient- passage of all pieces is critical to success.

Age of Automatic Adult Criminal Responsibility

Current law and practice

New York and North Carolina are the only two states where the age of adult criminal responsibility is set at 16. In 2013, there were 33,404 arrests of 16- and 17-year-olds in New York State.[4] These teenagers are automatically prosecuted as adults, even for the most minor of offenses. Under current law, no one- not even a judge- can transfer the case of a 16- or 17-year-old to Family Court and no one can order that a 16- or 17-year-old be held in a youth facility.

New York's current law contradicts a robust body of scientific research about brain development[5] in young people as well as the science of what works. Recent neuroscientific

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[4] *See* Final Report of the Governor's Commission on Youth, Punic Safety and Justice at 39.

[5] The prefrontal cortex of the brain, crucial for weighing risk vs. reward, future planning, and impulse control, is one of the last parts of the brain to develop and is still not fully mature even in late adolescence. Its development is crucial for rational decision-making. *See* Antoine Bechara et al., *Dissociation of Working Memory from Decision Making Within the Human Prefrontal Cortex*, 18 J. Neurosci. 428, 428, 434 (1998) (prefrontal cortex is necessary for decision-making in tasks involving evaluation of risk and reward); Antonio R. Damasio & Steven W. Anderson, *The Frontal Lobes, in Clinical Neuropsychology* 404, 434 (Kenneth M. Heilman & Edward Valenstein eds., 4th ed. 2003) (one "hallmark of frontal lobe dysfunction is difficulty making decisions that are in the long-term best interests" of the individual); see also Elizabeth R. Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 Nature Neurosci. 859, 860 (1999) (frontal lobes are essential for planning and organization); see also, e.g., Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* 23, 24, 141 (2001); see also B.J. Casey et al., *Structural and Functional Brain Development and its Relation to Cognitive Development*, 54 Biological Psychol. 241, 244-246 (2000). Juveniles, even in their late teens, do not have the same ability as adults to make mature decisions, and engaging in reckless behavior and failure to exercise self-control is normal for adolescents. Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*,

advances also offer an opportunity to rethink our approach to youth justice. Recognizing the malleability of the adolescent brain provides policymakers with a chance to design and deliver age-appropriate rehabilitative services that will be more effective in guiding young people during a critical period in their development and identity formation. This approach is well aligned with the goals of holding youth accountable and improving public safety. By applying the science of brain development, policymakers can now ensure that justice systems hold youth accountable in ways that are developmentally appropriate and thus far more likely to achieve their intended goals of reducing recidivism and increasing the positive long-term outcomes for system-involved youth.

Executive Proposal

The Executive Budget proposal would "raise the age" of criminal responsibility (the age at which a person can be tried as an adult) to 17-years-old in 2017, and 18-years-old in 2018. This phased implementation will allow for an initial integration of the smaller group of 16-year-olds into the Family Court system before full implementation in January of 2018.[6] This type of phased in approach was used in nearby Connecticut, and worked successfully.

The Proposed Executive Budget would move youth under 18 who are charged with all misdemeanors and most non-violent felonies into Family Court.

The Proposed Executive Budget does not raise the age for all youth. Youth charged with more serious crimes will continue to have their cases filed in adult criminal court, an issue addressed in more detail below.

The benefits of raising the age of automatic adult prosecution are many, and will accrue to individual youth, family members, communities, and the general public. This is because the harmful impacts of the adult prosecution of youth begin at arrest and can last a lifetime. As discussed in more detail later in this testimony, starting with arrest, parents whose 16- and 17-year-olds are arrested have no right of notification, even if their child is held overnight, and the police can interrogate youth without an adult present. Once a child enters the adult justice system, they generally cannot access the kinds of rigorous and age-appropriate interventions proven to reduce recidivism and improve public safety.

Analysis completed in support of the Commission's work found that if New York were to implement a range of evidence-based services currently used in juvenile justice for its population

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12 Developmental Rev. 339, 344 (1992); *see also* Elizabeth Cauffman & Laurence Steinberg, *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 Behav. Sci. & L. 741, 748-749, 754 & tbl. 4 (2000). Adolescents often do not accurately access risk and are more likely to place greater weight on rewards than on risks when making choices. Adolescents are also less likely to consider the long-term consequences of their actions and are more vulnerable to the negative influences of environment and peer pressure than adults. *See* Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1012 (2003); see also Arnett, supra note 5, at 350-353 (summarizing evidence that adolescents' poor capacity for assessing probabilities plays a role in their reckless behavior); Bonnie L. Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 J. Applied Developmental Psychol. 257, 261, 264-270 (2001).

[6] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §54, pgs. 201-04.

of 16- and 17-year-olds in the adult system (who currently do not have access to these interventions), the state would eliminate between 1,500 and 2,400 crime victimizations every five years.[7]

Overall, a strong body of scientific research proves that prosecuting youth as adults *increases* recidivism, including for violent crime. A rigorous study compared New York and New Jersey youth charged with robbery (1° and 2°), burglary (1°) and assault (1° and 2°). The NY cases originated in adult criminal court and the NJ cases originated in juvenile court (New Jersey's age of criminal responsibility is 18). The research found that New York youth were *100% more likely to be rearrested for a violent offense* and *47% more likely to be rearrested for a property offense*. The New York youth also had a greater number of rearrests for such offenses and a *26% greater chance of being reincarcerated.*[8]

Similarly, an independent systematic review of published scientific evidence found a "34% relative increase in subsequent violent or general crime" for youth transferred to the adult system as compared to youth prosecuted in the juvenile system. The report concludes that transferring young people to the adult system is "*counterproductive* to reducing juvenile violence and enhancing public safety."[9]

While not without flaw, New York State's youth justice system currently includes a wide range of appropriate tools for effectively and efficiently responding to youth who break the law. New York State- including this body- has invested heavily in creating a youth justice system that is evidence-informed and increasingly in line with national best practices and social scientific research, whereas the state's adult criminal justice system does not include these kinds of research-driven treatments and services for youth.

New York State's Family Courts have undergone significant reforms in recent years, and are well equipped to handle the cases of 16- and 17-year-olds. Family Court judges already hear a significant portion of more serious cases (as almost one-third of more serious "Juvenile Offense" cases for 13-, 14-, and 15-year-olds are currently waived down from adult criminal court).[10] The Family Court system includes probation adjustment (discussed in more detail later in this testimony); a robust continuum of community-based interventions; and probation and rehabilitation services designed for effectiveness with youth. The Family Court process also engages young people's families in services, as needed and appropriate. Youth justice staff members are generally trained to work specifically with youth, and many have specialized training in critically important areas such as positive youth development[11] and trauma-informed

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[7] *See* Final Report of the Governor's Commission on Youth, Punic Safety and Justice, at 1.
[8] FN 1 (Fagan, Kupchick and Liberman).
[9] FN 1(Hahn, McGowan, Liberman).
[10] In 2013, 30% of Juvenile Offense cases were removed to Family Court, Final Report of the Governor's Commission on Youth, Punic Safety and Justice, at 67.
[11] An increasing number of practitioners and advocates in the juvenile justice field are adopting a positive youth development (PYD) perspective and other strengths-based strategies that focus on youths' assets rather than their weaknesses or problems. PYD can be described as a youth's development of a sense of competency, usefulness, belonging, and influence. National Juvenile Justice Network, Policy Platform: Approaching Juvenile Justice With a Focus on Positive Youth Development 1 (2010) (citations omitted) (internal quotation marks omitted), http://www.njjn.org/uploads/digital_library/resource_1427.pdf.

care. In many ways, the current Family Court process offers *more* rigorous supervision and treatment for young people than does the adult justice system, including the routine monitoring of school attendance, curfew, and participation in community based services. The State Court System supports these proposed changes, and has stated that Family Court is equipped and able to accommodate these new cases.[12]

Additionally, when youth are locked up in the youth justice system, they remain with other youth and are generally housed in far safer conditions than those found in adult jails and prisons. Kids in youth facilities are also more likely to receive the kinds of rehabilitative programs and services that are key to successful community re-entry, as compared to youth in adult facilities. As discussed in more detail later, locking kids up in adult jails and prisons is dangerous for both kids and public safety.

For all of these reasons, raising the age of automatic criminal responsibility would keep kids and communities safer. The rest of this testimony will address specific legislative proposals within the Proposed Executive Budget.

Cases that will remain in adult criminal court, even after "raise the age"

Current law and practice regarding 13- to 15-year-olds charged with "Juvenile Offenses"
Under New York's current "Juvenile Offender" law, youth who are 13, 14 and 15 and are charged with certain serious crimes (enumerated by statue) have their cases filed in adult criminal court, with the possibility of a judicial removal to Family Court. Under the current Juvenile Offender law, a thirteen-year-old is criminally responsible for murder in the second degree, and a fourteen- or fifteen-year-old is criminally responsible for murder in the second degree, kidnapping in the first degree, arson in the first degree, assault in the first degree, manslaughter in the first degree, rape in the first degree, sodomy in the first degree, aggravated sexual abuse, burglary in the first degree, burglary in the second degree, arson in the second degree, robbery in the first degree, robbery in the second degree, criminal possession of a weapon in the second degree, where such a weapon is possessed on school grounds (as defined by Penal Law Section 220.00 (14)), attempted murder in the second degree, or attempted kidnapping in the second degree.[13]

Under current law, when deciding whether to remove one of the aforementioned "Juvenile Offense" cases to Family Court, the criminal court judge must follow one of two legal standards, depending on the severity of the charges. There is a heightened standard for certain offenses, making removal harder in these cases.[14]

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[12] Jeff Storey, State Court System Backs Cuomo Juvenile Justice Plan, New York Law Journal (2/20/2015), http://www.newyorklawjournal.com/id=1202718386744/State-Court-System-Backs-Cuomo-Juvenile-Justice-Plan#ixzz3SnBUNNIK.

[13] N.Y. Criminal Procedure Law § 10.00 (18).

[14] Under current law, in determining whether removal is in the interests of justice, the court must consider: the seriousness of the circumstances, and extent of harm caused by the offenses; the evidence of guilt regardless of trial admissibility; the history, character, and condition of the defendant; the purpose and effect of imposing upon the defendant an authorized sentence for the offense; the impact of removal to the community safety and welfare and upon the confidence of the public in the criminal justice system; the attitude of the complainant or victim with respect to the motion, where appropriate; and any other relevant fact indicating that a judgment of criminal court

Executive Proposal regarding 13- to 15-year-olds charged with "Juvenile Offenses"
Under the Governor's proposal, 13- to 15-year-olds charged with Juvenile Offenses would still have their cases filed in adult criminal court. The aforementioned list of Juvenile Offenses for 13- to 15-year-olds would not change.

Under the proposal, the only Juvenile Offense for which there would be a rebuttable presumption of removal to Family Court is robbery in the second degree. Overall, there would be two legal standards a criminal court judge would be required to follow when determining whether a Juvenile Offense case should be removed to Family Court, with a heightened standard for certain statutorily-defined offenses (making removal harder in these instances).[15] A Juvenile Offense case could be removed to Family Court only after the District Attorney and all parties have the opportunity to be heard, and only by virtue of a judicial ruling.

The cases of youth charged with Juvenile Offenses whose cases remain in adult criminal court would be heard in new "Youth Parts" (within adult criminal court) with judges who have received special training on working with youth.[16]

Executive Proposal regarding 16 and 17-year-olds charged with serious and violent crimes
Under the Executive Proposal, 16- and 17-year-olds charged with certain serious offenses would also have their cases begin in adult criminal court, even after the age is raised for all other youth. Specifically, under the Executive Proposal, prosecutions for all 16- and 17-year-olds for all Class A felonies, all homicides, all violent felony offenses, all sexually-motivated felonies, terrorism crimes, felony vehicular assaults, aggravated criminal contempt, and conspiracy to commit or tampering with a witness related to any of the above offenses, would begin in adult criminal

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conviction would serve no useful purpose. Removal of actions involving an indictment charging a juvenile offender with murder in the second degree, rape in the first degree, criminal sexual act in the first degree, or an armed felony requires prosecutorial consent as well as a court finding of one or more of the following factors: (a) mitigating circumstances that bear on the manner in which the crime was committed; (b) where the defendant was not the sole participant in the crime, the defendant's participant was relatively minor; or (c) possible deficiencies in the proof of the crime. N.Y. Criminal Procedure Law § 210.43.

[15] Under the proposed legislation, a youth part shall order removal of an action against a juvenile offender accused of second-degree robbery and a juvenile accused of committing a violent felony for which a youth age fifteen or younger is not criminally responsible to the family courts if the court determines that to do so would be in the interest of justice. The court shall find that it is not in the interest of justice if the youth played a primary role in commission of the crime or aggravating circumstances, such as, but not limited to, the use of a weapon, are present. Factors are: seriousness and circumstances of offense, extent of harm, evidence of guilt (admissible or not), history/character/condition of youth, purpose/effect of imposing authorized sentence, impact of removal, complainant's opinion, other facts indicating that a conviction would serve no useful purpose. New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, at pages 245-246. For those cases in which the felony complaint charges the juvenile offender with murder in the second degree, rape in the first degree, criminal sexual act, or an armed felony, a determination that such action be removed to family court shall be based on a finding of one or more of: mitigating circumstances that bear directly on the manner in which the crime was committed, the defendant's degree of participation in the crime, or possible deficiencies in proof. New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, at pages 245-246.

[16] Some localities within the state currently have specialized youth parts, but these specialized parts do not currently exist statewide.

court.[17] There would be a rebuttable presumption of removal for a set of less serious offenses as defined by statute.[18] As noted in the Commission's report, the "presumption for removal in some cases would protect against over-inclusion of crimes in which youth were caught up in a group activity but did not play a primary role in a crime."[19]

Overall, there would be two legal standards a criminal court judge would be required to follow when determining whether the case of a 16- or 17-year-old charged in adult criminal court should be removed to Family Court, with a heightened standard for certain statutorily-defined offenses (making removal harder in these instances).[20] In all instances, the case of a 16- or 17-year-old charged in adult criminal court could be removed to Family Court only after the District Attorney and all parties have the opportunity to be heard, and only by virtue of a judicial ruling.

The cases of 16- and 17-year olds whose cases remain in adult criminal court would be heard in new "Youth Parts" (within adult criminal court) with judges who have received special training on working with youth (as discussed above, these Youth Parts would also hear the cases of 13- to 15-year-olds charged with Juvenile Offenses whose cases remain in adult criminal court).

16- and 17-year-olds will also continue to have their cases heard in adult court for all Vehicle and Traffic License offenses.[21]

The lower age of juvenile responsibility

Current law and practice

New York is currently one of 16 states that set a lower bar on juvenile jurisdiction by statute, and of those states only 6 set the age below 10.[22] States without a statutory minimum still have a

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[17] 16-and 17-year-olds are criminally responsible for violent felonies, class A felonies, vehicular assault in the second degree and first degree, aggravated vehicular assault, criminally negligent homicide, vehicular manslaughter in the first degree, aggravated vehicular homicide, manslaughter in the second degree and first degree, aggravated manslaughter in the first and second degree, tampering with a witness in the third degree, second degree, and first degree, aggravated criminal contempt, sexually motivated felonies, acts of terrorism, and conspiracy. Additionally, 16-and 17-year-olds are considered persons over the age of eighteen for prosecution of acts constituting an offense set forth in the vehicle and traffic law.

[18] Supra, FN 15 (New York State Executive Budget).

[19] Final Report of the Governor's Commission on Youth, Public Safety and Justice, at page 77.

[20] Under the proposed legislation, a youth part shall order removal of an action against a juvenile offender accused of second-degree robbery and a juvenile accused of committing a violent felony for which a youth age fifteen or younger is not criminally responsible to the family courts if the court determines that to do so would be in the interest of justice. The court shall find that it is not in the interest of justice if the youth played a primary role in commission of the crime or aggravating circumstances, such as, but not limited to, the use of a weapon, are present. Factors are: seriousness and circumstances of offense, extent of harm, evidence of guilt (admissible or not), history/character/condition of youth, purpose/effect of imposing authorized sentence, impact of removal, complainant's opinion, other facts indicating that a conviction would serve no useful purpose. New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, at pages 245-246.

[21] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, at page 204.

[22] Juvenile Justice Geography, Policy, Practice & Statistics (JJGPS), http://www.jjgps.org/jurisdictional-boundaries#age-boundaries?year=2012&ageGroup=1. In North Carolina the lower age of juvenile jurisdiction is set at 6-years-old, in New York, Massachusetts, and Maryland it is 7, and in Arizona and Washington it is 8.

practical minimum that varies depending on prosecutorial and judicial discretion, other legal standards, and competency determinations.[23]

Executive Proposal
The Proposed Executive Budget would additionally raise the lower age of juvenile jurisdiction from 7 to 12 for all but homicide offenses.[24]

The number of youth under 12 involved in delinquency proceedings in the state is currently very small.[25] Scientific studies show that the ability of young children to understand and exercise their legal rights in a trial-like setting is limited.[26] These young children often have serious and unmet social service needs, and would benefit from services and interventions designed to meet their unique needs and improve their future prospects. By contrast, justice system involvement can have the unintended consequence of worsening long-term outcomes for this highly vulnerable population. Providing age- and developmentally- appropriate interventions and services for children younger than 12 would ultimately ensure that fewer of them become justice-involved as they age, ultimately improving their long-term outcomes, benefitting public safety, and saving taxpayer funds. The current PINS system for community-based diversion could be used for very young children engaging in delinquent behavior, as could family support and crisis centers (these options will be discussed in more detail later in this testimony).

Youth in Adult Jails and Prisons

Current law and practice
Currently, 16- and 17-year-olds prosecuted as adults are held in adult jails and prisons. In New York State Department of Corrections and Community Supervision (DOCCS) prisons, youth are, to the best of our knowledge, currently housed in general population with adults, including side-by-side in shared dormitories holding as many as 60 people of all ages.[27]

New York State law requires local jails to house 16- and 17-year-olds separately from those 18 and older, although minors and adults can mix in common areas.[28] Despite this separation, conditions for 16- and 17-year-olds in adult jails can be brutal and can worsen outcomes for youth, ultimately harming both young people and public safety. In New York City, adolescents in the Rikers Island jail complex are separated from adults, although a federal Department of Justice investigation found that these young people are subject to brutal and inhumane

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[23] For example, in California the state needs "clear proof" that a child under fourteen can understand the wrongfulness of his or her conduct in order to try him or her in a family court. *See* In re James B., 135 Cal. Rptr. 2d 457, 464 (Cal. App. 4 Dist. 2003).
[24] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §4, pg. 141. Juvenile jurisdiction would continue for 10- and 11-year-olds accused of first or second degree murder.
[25] In 2013, only 272 initial juvenile delinquency petitions were filed in 2013 for children under 12. DCJS-OCA Juvenile Delinquent Family Court Database, prepared by the Division of Criminal Justice, Office of Justice Research and Performance (OJRP), April 29, 2014.
[26] *See* Thomas Grisso, et al., "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants," *Law and Human Behavior* 27, no. 4 (2003): 333–63.
[27] Final Report of the Governor's Commission on Youth, Public Safety and Justice, at pages 81 to 83.
[28] Final Report of the Governor's Commission on Youth, Public Safety and Justice, at page 81.

conditions, including the routine use of excessive force.[29] The federal Department of Justice recently joined a lawsuit against the city challenging conditions for adolescents on Rikers Island, and violence against youth on Rikers continues despite both federal and city attention.[30]

As the only organization with the legislative authority to visit New York State prisons and monitor conditions, I have personally visited DOCCS facilities, and witnessed the myriad ways in which they are highly inappropriate for youth. In addition, the Commission visited both youth and adult facilities throughout the state, and I personally participated in these visits. The Commission's report describes some of the significant differences between youth and adult facilities, including in staffing levels, educational opportunities, programming, access to mental health services and treatment, and access to health care.[31]

Additionally, young people housed in adult prisons and jails are in grave danger. Children in adult facilities are nearly fifty percent more likely to face an armed attack when inside, and nearly 100% as likely to be beaten by staff as compared to young people in youth facilities.[32] Children in adult jails are 36 times more likely to commit suicide than children in adult detention facilities,[33] and the National Prison Rape Elimination Commission stated that "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse."[34]

In some, although not all, adult facilities, children may be placed in solitary confinement, including for months at a time or longer. Children in solitary confinement may spend only one hour a day out of their cells, with their "recreation" taking place alone in an outdoor pen.[35] Children in solitary confinement do not leave their cells to go to school or programs. They also cannot make phone calls, including to their parents. Extended isolation can be psychologically shattering for anyone, but it is especially harmful for developing adolescent minds.[36] Solitary confinement has been shown to both cause and exacerbate mental illness in adolescents.[37] If a

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[29] Press Release, Preet Bharara & Eric Holder, Manhattan U.S. Attorney Finds Pattern And Practice Of Excessive Force And Violence At NYC Jails On Rikers Island That Violates The Constitutional Rights Of Adolescent Male Inmates (Aug. 4, 2014), http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR.php.

[30] Michael Winerip and Michael Schwirtz, Even as Many Eyes Watch, Brutality at Rikers Island Persists, New York Times (last updated online 2/21/2015), noting that despite new initiatives targeting young people in Rikers, use of force by guards against the youngest people on the island spiked in December 2014.

[31] Final Report of the Governor's Commission on Youth, Public Safety and Justice, *see* pages 81 to 91.

[32] Martin Forst, Jeffrey Fagan and T. Scott Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," *Juvenile and Family Court Journal*, 40 (1) (1989).

[33] Arya Neelum, Jailing Juveniles: The dangers of incarcerating youth in adult jails in America (2007), http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf).

[34] National Prison Rape Elimination Commission Report (2009) at 18, http://www.ncjrs.gov/pdffiles1/226680.pdf.

[35] New York Civil Liberties Union, Boxed In: The True Cost of Extreme Isolation in New York's Prisons (2012), http://www.boxedinny.org/.

[36] American Civil Liberties Union and Human Rights Watch, *Growing Up Locked Down, Youth in Solitary Confinement in Jails and Prisons Across the United States* (2012).

[37] *Id.* (Growing Up Locked Down), at 23 *citing* Maureen L. O'Keefe et al., Colorado Department of Corrections, "One Year Longitudinal Study of the Psychological Effects of Administrative Segregation," October 31, 2010, https://www.ncjrs.gov/pdffiles1/nij/grants/232973.pdf (accessed August 27, 2012); Peter Scharff Smith, National Institute of Corrections, "The effects of solitary confinement: Commentary on One Year Longitudinal Study of the Psychological Effects of Administrative Segregation," June 2011, www.community.nicic.gov/cfs-

parent punished their 16-year-old by locking them in a bathroom most of the day--for weeks or months on end--depriving them of human contact and school, and pushing food through a door slot, they would be charged with child abuse. And their child- along with all of their siblings- would almost certainly be placed in foster care. But under New York State law that same 16-year-old can, in some adult facilities, be held in solitary confinement for even a minor infraction.

Executive Proposal

The Proposed Executive Budget would prevent youth arrested before age 18 from being held in adult jails or prisons, and instead commit them to the custody of the Office of Children and Family Services (OCFS) to be housed in youth facilities.[38] Youth adjudicated as Juvenile Offenders or Youthful Offenders will be in OCFS custody if they are under 21-years-old at the time of sentencing and may remain in OCFS custody until the age of 23.[39] OCFS may transfer youth who turn 18 while in OCFS placement to DOCCS adult prisons if the commissioner certifies that there is not a substantial likelihood that the youth will benefit from OCFS programs.[40]

Getting children out of adult jails and prisons is good for kids and good for public safety. The trauma and abuse that children routinely face inside adult facilities can scar them for life, decreasing the chances that they will successfully reenter the community upon release. The Proposed Executive Budget will ensure that when youth are confined, they are held with other youth in settings more appropriate to their age and development. The provision of age- and developmentally-appropriate rehabilitation and services will improve both individual outcomes and public safety. Additionally, protecting children from the rape, sexual abuse, assault, emotional abuse, and suicide that frequently characterizes the experience of children in adult jails and prisons is a critically important outcome in its own right.

For some youth serving longer sentences (which, as discussed previously, will continue to happen even after the age is raised), the first part of their sentence will take place in a youth facility, and they will then be transferred to an adult facility. This is similar to the status quo process for 13-, 14-, and 15-year-olds currently sentenced as Juvenile Offenders (who begin placement in youth facilities, and can later be transferred to adult facilities).[41] Ultimately, the young people sentenced to long terms will be released as adults from adult facilities. These proposals would help ensure that these youth receive age-appropriate rehabilitation and services during the early part of their sentences, and are protected from the aforementioned horrible abuses routinely faced by children in adult jails and prison.

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filesystemfile.ashx/_key/CommunityServer.CommunityServer.Components.PostAttachments/00.00.05.95.22/Supermax-_2Doo_-T-_2Soo_-Smith.pdf (accessed August 27, 2012).

[38] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §60, pgs. 212-14.

[39] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §95, pgs. 258-59.

[40] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §96, pgs. 264.

[41] Currently, youth sentenced as Juvenile Offenders are initially held in youth detention and secure youth placements. At the age of 16, the sentencing court can order these youth transferred to an adult facility. At the age of 18, the New York State Office of Children and Family Services can, at its discretion, transfer these individuals to an adult facility. At age 21, transfer to an adult facility is mandatory. See Final Report of the Governor's Commission on Youth, Public Safety and Justice, at page 68.

Parental Notification and Interrogation of Youth

Current law and practice

Currently, very limited protections exist for 16- and 17-year-olds upon arrest. Police have no statutory obligation to notify a parent or guardian and youth may remain in police custody or jail for days without a caregiver's knowledge of their location, and may be detained in police lockups with adults.

Executive Proposal

The Proposed Executive Budget would expand to 16- and 17-year-olds who are arrested the current juvenile practices for parental notification and questioning.[42] For warrantless arrests, the arresting officer would have to immediately inform a parent or a person legally responsible for the youth's care, provide the location of the facility where the youth is being detained, and would not be able to question the youth until that person, if present, is advised of the youth's rights.[43] The legislation would also require questioning of 16- and 17-year-olds to take place in a facility designated as a suitable place for the questioning of children, or in the child's residence with parental consent.[44]

Research shows that youth are substantially more likely than adults to waive their *Miranda* rights, make incriminating—and often untrue—statements, have difficulty understanding their *Miranda* rights, and misunderstand the long-term consequences of not invoking their rights.[45] The law recognizes that typical *Miranda* warnings are not enough to protect youth during the post-arrest process, which is why there are currently additional procedural requirements—such as parental notification—for youth under 16. 16- and 17-year-olds are equally as vulnerable in the interrogation setting and the Budget Proposal would allow for them to be provided the same protections and caregiver support post-arrest.

This legislation would bring New York standards in line with practices in comparable states. Without these protections, the youth are more likely to give unreliable statements or false confessions during the interrogation, which can threaten the soundness of the judicial outcome, harm innocent youth and their families, and erode the public's faith in the judicial process.

This change would also benefit parents and caregivers. Currently the parent/caregiver of a 16- or 17-year-old does not have to be notified of their child's arrest, even when a child is held overnight. Under the current law, parents/caregivers have no right to be with their child during questioning. The lack of parental notification and presence can be particularly detrimental for youth with cognitive impairments and/or mental health disorders. Evidence shows that youth

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[42] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §64, pgs. 222-23.

[43] *Id.*

[44] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §9, pgs. 146-47.

[45] Barry C. Feld, "Real Interrogation: What Actually Happens When Cops Question Kids," *Law & Society Review* 47, no. 1 (2013): 12.; Jodi L. Viljoen et al., "Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals," *Law and Human Behavior* 29, no. 3 (2005): 253–77; Thomas J. Grisso and Carolyn Pomicter, "Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver," *Law and Human Behavior* 1, no. 4 (1977): 321–342.

with mental health and/or cognitive impairments are disproportionately represented in the justice system.[46] These youth are at great risk of giving false information to the police, failing to understand police questions, and failing to understand their rights to counsel and to remain silent.

By including 16- and 17-year-olds in the current protections for younger youth, the Budget Proposal would go a long way to ensuring that the rights of youth and parents are better protected.

Opportunities for Diversion from Court

Current law and practice

New York's Family Court system has built in "off-ramps" that divert youth from formal court processing, often instead requiring that youth follow guidelines set by a probation officer. Such off-ramps are usually referred to as "diversion" or "adjustment." In Family Court, "(a)djustment occurs when the probation department decides not to refer the case to the presentment agency, as long as the youth follows the guidelines set by a probation officer. Diagnostic testing for service needs occurs at this stage, and a wide range of services may be provided through either probation or social service agencies."[47]

16- and 17-year-olds prosecuted in adult criminal court currently have no opportunity for probation diversion. The lack of probation diversion for this population is costly in terms of both dollars and increased recidivism.

Executive Proposal

The Executive Budget would expand categories for diversion for youth under the age of 18 whose cases would now be heard in Family Court (as discussed earlier, youth charged with more serious crimes would still have their cases originate in adult criminal court). The Executive Budget proposal requires probation departments to use a validated risk assessment tool to assess a young person's risk level when making determinations about whether to attempt to adjust a case. The proposal also requires probation to assess the harm to victim when making the determination about whether to attempt to adjust a case.

Generally, diversion/adjustment is both less expensive than formal court processing,[48] and proven to reduce recidivism.[49] When low-risk youth receive community-based services, rather than penetrate the justice system, their recidivism rates decrease. Allowing the adjustment of low-risk cases for 16- and 17-year-olds would benefit both public safety, and taxpayers. Adjusting low-risk cases preserves limited resources for higher-risk youth, while reducing- rather than inadvertently increasing- recidivism among low-risk youth.

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[46] In 2013, 57.3% of youth admitted to OCFS facilities were found to have mental health needs at intake. *See* Final Report of the Governor's Commission on Youth, Punic Safety and Justice, at 118.

[47] The New York State Juvenile Justice Steering Committee, *Safe Communities Successful Youth: A Shared Vision for the New York State Juvenile Justice System, Strategy and Action Plan* (July 2011), at 22, Appendix B.

[48] Juvenile Diversion Guidebook, Models for Change Diversion Workgroup, at 12.

[49] Anthony Petrosino, Sarah Guckenburg, and Carolyn Turpin-Petrosino, Formal System Processing of Juveniles: Effects on Delinquency: A Systematic Review, 1, 1-88, http://campbellcollaboration.org/lib/project/81/.

Diversion from Detention and Placement

Current law and practice

Currently, youth who are arrested and not released to their parents by the police are held in detention facilities until the Family Court is next in session, which means they could be held for several days if arrested over a weekend. In the status quo, the court possesses the discretion to detain and place youth in residential settings for any offense, even minor violations. This allows for youth to be placed in settings that are more restrictive than necessary for their risk level, which can increase rates of recidivism, violence, and poor life outcomes.[50]

The Commission found that youth who have committed only low-level non-violent offenses are often being placed in custody. For example, about 2,200 minors receive sentences to jail or time served following a misdemeanor arrest, and 80% of those involved non-violent arrest charges. In New York City, 59 percent of detention admissions are for youth charged with misdemeanor offenses.[51] Placing low-risk youth in custody harms their individual outcomes, and is an inefficient and wasteful use of taxpayer funds.

Executive Proposal

The Executive Budget authorizes designated magistrates to conduct detention hearings on weekends and other times when the Family Court is not in session, so that youth are not unnecessarily held for extended periods.[52] The Budget also limits the courts' discretion as to detention and placement decisions and requires that the basis of the determination be the nature of the alleged act and the risk to public safety.[53]

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[50] D. A. Andrews and James Bonta, "Rehabilitating Criminal Justice Policy and Practice," Psychology, Public Policy, and Law 16, no. 1 (2010): 39–55; See Neelum Arya, Campaign for Youth Justice, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America" 1 (2007), http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf; Amanda Petteruti et al., Just. Pol'y Inst., "The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense" 1, app. A, at 16–19 (2009), http://www.justicepolicy.org/images/ upload/09_05_REP_CostsOfConfinement_JJ_PS.pdf; see also Barry Holman & Jason Ziedenberg, Just. Pol'y Inst., "The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities" 1, 4–5 (2006), http://www.justicepolicy.org/images/ upload/06-11_REP_DangersOfDetention_JJ.pdf; "The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform," Campaign for Youth Just. 1 (Liz Ryan & Jason Ziedenberg eds., 2007), http://www.campaignforyouthjustice.org/documents/CFYJNR_ConsequencesMinor.pdf; Task Force on Community Preventive Services, "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System," 32 Am. J. Prev. Med. S7 (2007), http://www.thecommunityguide.org/violence/mcgowanarticle4.pdf.

[51] Final Report of the Governor's Commission on Youth, Punic Safety and Justice, at 95 to 96.

[52] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §11, pgs. 146-47.

[53] Specifically, youth must be released to the custody of a guardian instead of being held in detention if the alleged act is a violation (violations are not crimes). If the alleged act is a non-violent misdemeanor, the youth cannot be detained if assessed at low risk, unless he or she otherwise poses an imminent risk to public safety. Similarly, at disposition the court cannot order placement in a facility for low-risk youth charged with a violation, or charged with a non-violent misdemeanor unless there is an imminent risk to public safety. The court also cannot detain or place youth or juvenile offenders for technical violations of probation unless a new crime is alleged, the youth poses a specific and imminent threat to public safety, or the youth is on probation for a violent felony and has exhausted all other possible sanctions. New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §13, 22, 31, pgs. 148-49, 160, 168. If the alleged act or act is a misdemeanor, the

The proposal allows jurisdictions to concentrate resources on youth who pose a safety risk while requiring diversion attempts for low-risk cases and expanding opportunity for assessment and targeted interventions. In the status quo, low-risk youth held for violations and non-violent misdemeanors are ultimately released after very short stays- so detaining them for any period of time is of no benefit to public safety and only increases the cost of the system to taxpayers. Additionally, the proposal would prevent increased recidivism rates that result from detaining youth in residential settings that are disproportionate to their level of risk.[54] Research shows that the community-based interventions provided to low-risk youth through diversion instead of court processing are effective in reducing recidivism rates.[55]

As noted in the Commission report, other states have placed restrictions on the use of out-of-home placement for some youth charged with low-level offenses. Texas, Ohio, Georgia, Mississippi, Kentucky, and Florida have enacted legislation banning the use of custody for specific categories of youth, particularly those charged with misdemeanors.[56]

The Commission also found that resources currently being used for the unnecessary detention and placement of low-risk youth can be redirected to support the use of these settings for those youth who have been found to pose a risk to public safety.[57]

Reducing the unnecessary and ineffective confinement of low-risk youth, while increasing access to community-based interventions (as outlined both in this and other sections of this testimony) is good for kids, and good for the public.

Bail

Current law and practice

Under the current system, the opportunity to be released on bail is available for 16- and 17-year-olds since they are charged as adults in adult criminal court. For a misdemeanor complaint, the court must either order release of the youth on his or her own recognizance or set bail. For a felony complaint, the court can order recognizance, bail, or commit the youth to the sheriff's custody to be held in an adult jail. The Family Court Act currently does not provide an opportunity to be released on bail.

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child must also not have had any prior adjudications for a felony and no more than one prior adjudication for a non-violent misdemeanor in order to be released.

[54] Andrews and Bonta, The Psychology of Criminal Conduct; Andrews, Zinger, Hoge, Bonta, Gendreau, and Cullen, "Does Correctional Treatment Work?"; Craig Dowden and D. A. Andrews, "What Works in Young Offender Treatment: A Meta-Analysis," Forum on Corrections Research 11, no. 2 (May 1999): 21–24; and Paul Gendreau, Paula Smith, and Sheila A. French, "The Theory of Effective Correctional Intervention: Empirical Status and Future Directions," in Francis T. Cullen, John Paul Wright, and Kristie R. Blevins, eds., Taking Stock: The Status of Criminological Theory (New Brunswick, NJ: Transaction Publishers, 2006), 419–46.

[55] Examples are Multisystemic Therapy, Functional Family Therapy, and Aggression Replacement Training. *See* Final Report of the Governor's Commission on Youth, Punic Safety and Justice, at 23-27.

[56] Final Report of the Governor's Commission on Youth, Punic Safety and Justice, at 96.

[57] Final Report of the Governor's Commission on Youth, Punic Safety and Justice, at 95.

Executive Proposal
The proposed Executive Budget would give Family Courts the discretion to fix bail for youth 16 and older who are charged in Family Court or removed to Family Court.[58] The proposal would maintain bail as an option for youth who currently have it in adult court and ensure that 16- and 17-year-olds are not unnecessarily disadvantaged from the shift to Family Court.

Sentencing

Current law and practice
In the status quo, youth adjudicated juvenile delinquents in Family Court face a maximum of 18 months in placement for a felony and 12 months in placement for a misdemeanor. After the initial period, the placement can be extended after a hearing. For the most serious offenses tried in Family Court, there are restrictive placements which can be used to protect public safety—up to 5 years for Class A felonies and 2 years for other felonies. Juvenile Offenders are currently sentenced under ranges that are more severe than those available in Family Court but less severe than those used to sentence adults. 16- and 17-years-old face the same possible consequences as adults in adult criminal court, including the same ranges for determinate or indeterminate sentences of incarceration and enhanced sentencing structures.

Executive Proposal
Under the Executive Budget Proposal, 16- and 17-year-olds charged in the adult system would be sentenced under the Juvenile Offender statutory ranges rather than the adult statutory ranges.[59] However, for most Class A felonies as well as Class B felonies with aggravating circumstances the current adult sentencing structure will be used for 16- and 17-year-olds.[60] All sentences other than for the Class A-1 felony of second-degree murder would be determinate rather than indeterminate sentences.[61]

Allowing for 16- and 17-year-olds to be sentenced under Juvenile Offender statutory ranges rather than existing adult sentences not only increases the rehabilitative opportunities for this group, but avoids the illogic of allowing for violent felony offenses to have sentences that are more severe than those for Juvenile Offender crimes, even though the violent felony offenses are generally less serious.

The proposal simultaneously retains the current sentencing structure for Class A felonies that are not Juvenile Offender crimes, and provides an option for longer sentences if the youth commits a Class B violent felony if there are aggravating circumstances, including the gravity of risk to public safety.

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[58] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §17, pgs. 154-55.
[59] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §57, pgs. 207-08.
[60] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §57, pgs. 206-07. Aggravating circumstances include the severity of the injury to the victim and the gravity of risk to public safety.
[61] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §57, pgs. 206-07.

Youthful Offender (YO) Status Eligibility

Current law and practice

"Youthful Offender" status is New York State's existing mechanism for reducing the lifelong impact of a criminal conviction for youth ages 18 and under. Youthful Offender status converts a young person's criminal conviction to a confidential noncriminal adjudication. Courts currently must grant Youthful Offender status to youth under age 19 for the first misdemeanor conviction and have the discretion to grant it for other convictions. Youth are excluded from eligibility if they have previously been convicted, designated a Youthful Offender, or adjudicated delinquent for a designated felony. Although the current Youthful Offender law provides some important protections, many practitioners have pointed to its limitations and called for its expansion, particularly citing the need to reduce barriers to successful community reentry for older youth.

Executive Proposal

The proposed Executive Budget would create a presumption to grant Youthful Offender status to youth under age 21 who has not been previously convicted and sentenced or adjudicated for a felony, which the District Attorney can rebut by showing that the interests of justice require otherwise.[62] Adult sentencing would still be retained for 19- and 20-year-old Youthful Offenders.

Increasing the opportunities for young people to obtain Youthful Offender status would increase positive outcomes for individual youth, and benefit public safety. As described in more detail earlier in this testimony, the collateral consequences of a permanent criminal record can forever limit an individual's ability to achieve stable housing, employment, and educational advancement- each of which are critical to successful community reentry.[63] The collateral consequences of criminal records extend way past after the time individuals have served their sentences, and because of the negative impact on successful community reintegration, harm public safety. By contrast, Youthful Offender adjudications specifically reduce the very real barriers to successful community reentry, improving both individual life outcomes and public safety.

Criminal Records and Record Sealing

Current law and practice

Currently, other than for those youth who receive Youthful Offender status, convictions remain on youth's criminal records for life, which can- as articulated with more detail in the section above- forever limit an individual's chances for stable housing, employment, and education—all of which are critical to successful community re-entry, and reducing recidivism.

Executive Proposal

Under the Executive Budget Proposal, youth would have the ability to conditionally seal one conviction for charges incurred before age 21 if they remain conviction-free for the statutorily

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[62] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §79, pgs. 241-42.

[63] *See e.g.* Corriero, M.A. *Judging Children as Children: Reclaiming New York's Progressive Tradition*, 56 N.Y.L. Sch. L. Rev. 1413, 1419 (2011–12); *and* Juszkiewicz, J. (2007, October); *To Punish A Few: Too Many Youth Caught in the Net of Adult Prosecution.*
Washington, D.C.: Campaign for Youth Justice.

specified time[64] as long as the charge is not for a violent felony, Class A felony, homicide, or sex offense.[65] The conviction would still be available to law enforcement agencies, agencies with the responsibility for issuing gun licenses, and prospective employers of police or peace officers.[66] If the youth is arrested for or charged with a subsequent misdemeanor or felony offense, the records would be immediately unsealed and remain unsealed.[67]

As discussed in the previous section, criminal convictions pose serious barriers to successful re-entry. The proposal reduces those collateral consequences, while simultaneously maintaining law enforcement access. By increasing opportunities for young people who have successfully served their sentences, the conditional seal of criminal convictions is another way that the proposed legislation will improve public safety.

Increased Penalties for Serious Crimes

Current law and practice

In the current system, there are increased penalties for serious "Designated Felonies" under the Family Court Act. Youthful Offender sentences cannot be used for sentence enhancement for subsequent crimes and Juvenile Offender sentences may have parole supervision at the discretion of the court.

Executive Proposal

The Executive Budget would add additional offenses to the list of Designated Felonies under the Family Court Act that would be subject to increased penalties. Additionally, convictions of 16- and 17-year-olds adjudicated as Youthful Offenders for a juvenile offense would be considered a predicate in sentencing for subsequent violent felony sentencing.[68] Juvenile Offender sentences would also require a period of post-release supervision.[69]

Persons in Need of Supervision (PINS) Reform

Current law and practice

In the status quo, youth can be detained and placed in juvenile facilities for status offenses, such as truancy. Status offenses are not crimes. A "status offender" is defined as a youth under 18 who does not attend school as required, is incorrigible, is ungovernable, is habitually disobedient and beyond the lawful control of a parent or other person legally responsible, violates the provisions

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[64] 2 years for a misdemeanor, 5 years for a felony, and 10 years for a conviction as a Juvenile Offender. New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §67, pg. 227.

[65] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §67, pg. 226.

[66] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §67, pg. 228-29.

[67] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §67, pg. 229.

[68] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §56, pg. 206.

[69] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part J, §55, pg. 204.

of the penal law regarding marijuana or prostitution, or appears to be a sexually exploited child.[70] Local service attempts to divert PINS cases from court are required by law, with no time limit on diversion, before a petitioner can access the Family Court.

Currently, youth being adjudicated for PINS may be placed in institutional settings although they have committed no criminal offense, but can be confined only in non-secure detention and placement facilities. The residential placement of youth solely adjudicated Persons In Need of Supervision is an ineffective and inefficient use of taxpayer resources. Placing these youth in residential settings has not been demonstrated to work, and comes at great taxpayer cost.

Executive Proposal
The Proposed Executive Budget would ensure that courts cannot detain youth solely on a PINS petition. The Proposed Executive Budge would also create Family Support Centers to provide community- based supportive services to children and families to prevent PINS adjudications.

Nearby Connecticut developed a promising model using such Family Support Centers. During the first six months after implementation, Connecticut saw status offense referrals fall by 41 percent. More than one year later no youth charged with a status offense had been securely detained. And for the two years following implementation, 81 percent of young people who successfully completed a FSC program had no further involvement in the juvenile justice system.[71]

The proposal would also require the lead PINS agency to assess all youth for sexual exploitation. Furthermore, pursuant to a PINS petition, the only youth that a court can place into a residential facility would be sexually exploited youth, who can be placed into long-term safe houses.

This proposal would improve outcomes for youth charged with PINS petitions, by ensuring that they and their families receive necessary supports. It would also benefit taxpayers, by ensuring that limited justice system resources are channeled toward youth who pose actual public safety risks, rather than those simply suffering from social service challenges.

Increased Youth Services

Current law and practice
In the status quo, there is no risk and needs assessment or services provided to youth in adult court, and no rehabilitative services are provided while a case is pending in adult criminal court. Additionally, no youth-focused training is required for judges handling the cases of youth in adult court.

Executive Proposal
Under the Proposed Executive Budget, any youth charged in adult court and released on recognizance or bail after arraignment in the youth part will have a risk and needs assessment undertaken by the probation department. Probation will then refer young people to evidence-based

[70] NY Family Court Act § 712(a).
[71] Final Report of the Governor's Commission on Youth, Public Safety and Justice, at page103.

services when a need for such has been identified. This will allow youth to receive effective evidence-based interventions while their cases are pending. The advantages to this change include better outcomes for youth, the more efficient use of taxpayer dollars, and improved public safety (as these evidence-based interventions are proven to reduce recidivism).

Additionally, under the proposal, pre-sentence investigations shall incorporate assessment findings, referrals, and progress. And judges sitting in youth parts will be trained in juvenile justice, adolescent development, and effective treatment methods for crime reduction. Finally, BOCES (Board of Cooperative Education Services) will be allowed to enter into contracts with OCFS to provide any of their services to youth in custody, improving the educational opportunities for confined youth. As discussed elsewhere, educational services are a critical component of successful community reentry and go a long way to reducing recidivism.

In sum, increasing the use of risk and needs assessments and access to evidence-based services- notably including during the pendency of cases- is a smart use of taxpayer resources and will result in better outcomes.

Other states have successfully raised the age, saving money and improving public safety

Over the last decade, many states have successfully raised the age of criminal responsibility without overwhelming the courts, and while maintaining and even improving public safety. Data from other states also demonstrates that raising the age of criminal responsibility does not result in the kinds of astronomical costs that opponents often site in opposing such reforms.

When nearby Connecticut was considering raise the age legislation, opponents estimated an increase of 100 million dollars. In reality, Connecticut both successfully raised the age and *increased* spending on community based programs, with the end result of a *decrease* in overall spending. Specifically, "Connecticut expanded its investment in evidence-based, family-focused adolescent treatment programs from $300,000 in 2000 to $39 million in 2009."[72] Connecticut also raised the age of criminal responsibility from 16- to 18-years-old. Yet, in 2011, after adjusting for inflation, Connecticut spent $2 million less on its youth justice system than it had ten years earlier.[73] After raising the age, Connecticut also saw total arrests and violent crime arrests considerably drop.[74] In 2009, before Connecticut raised the age its juvenile probation 24-month rearrest rate was 64%. In the 3rd Quarter of 2013, after full implementation of raise the age for both 16- and 17-year-olds, that recidivism rate has dropped to 58%.[75]

In other jurisdictions, fears of youth system "flooding" have not materialized in fact. The experience of states like Connecticut demonstrate that raising the age of criminal responsibility can result in the more efficient use of court resources and a reduction in overall court

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[72] Justice Policy Institute, Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Have Improved Public Safety and Outcomes for Youth (2013), http://www.justicepolicy.org/research/4969.
[73] *Id.* (Justice Policy Institute).
[74] *Id.* (Justice Policy Institute).
[75] Judicial Branch presentation, Reducing Commitments and Improving Outcomes: The Connecticut Experience, CJPAC Meeting, October 31, 2013, http://www.ct.gov/opm/lib/opm/cjppd/cjcjpac/cssd_cjpac_10_30_13_final.pdf.

processing.[76] For example, in Connecticut, the number of juveniles referred to the court is down 16.5% since 2008, despite full implementation of Raise the Age.[77]

Conclusion

The Governor's Commission proposed pragmatic, middle of the road solutions to fix New York's current failing laws. The proposals, as adopted by the Governor in his Proposed Executive Budget, are good for New York's youth, families, communities, public safety, and taxpayers.

The proposed legislation would ensure that youth in the justice system are held accountable in ways that work. The legislation is based on and driven by strong scientific evidence about how to help kids and reduce delinquencies and crime. This evidence repeatedly makes clear that prosecuting youth in the adult justice system and housing kids in adult jails and prisons increases, rather than decreases, crime. This scientific proof is further supported by the experience of many other states across our nation who have raised the age of criminal responsibility, and seen their arrest and recidivism rates drop.

New York and North Carolina share a failed public policy. You have before you the chance to move New York from laggard to leader, and to improve the lives of children, as well as the safety of our communities.

The proposals in the Executive Budget were designed as an inter-related and comprehensive package. The proposals were carefully crafted, with great attention to both the science of what works and the system as a whole. The proposals are supported by a diverse group of stakeholders, including law enforcement, the judiciary, advocates, and service providers. Long-term success depends on the passage of the proposals as a package. We urge your support. The lives of young people and the safety of our communities hang in the balance.

ADDITIONAL ANALYSIS OF PROPOSED DOCCS FY 2015-16 BUDGET

Existing Provisions of the Proposed DOCCS FY 2015-16 Budget

Overall, the DOCCS budget ($2.95M) was increased by almost 4% from the previous year, despite a 2% decline in the total DOCCS incarcerated population. The allocations to the various divisions of the Department, however, are not even and reflect some positive and some concerns about the adequacy of funding for the next fiscal year. This budget reflects a significant increase in program staffing that is necessary to meet the needs of the population and additional allocations for the new, highly effective hepatitis C treatment now available. Of concern, however, is the continuing decline in medical staffing, significant reductions in support personnel while the level of security staff is increasing.

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[76] *Id.* (Justice Policy Institute).

[77] FN 31 (Judicial Branch presentation, Reducing Commitments and Improving Outcomes: The Connecticut Experience).

Program Services –The most positive aspect of the DOCCS budget is in program staffing. The Governor's budget indicates that they will add 156 program staff during FY 2015-16 to reach 2,946 program items. The increase in fact is even greater than the program staff originally proposed in the budget for FY 2014-15 because DOCCS apparently added 73 program staff members during FY 2014-15 above that proposed in last year's budget (proposed increase from 2,690 FTEs to 2,717 items for FY 2014-15 but current budget projects 2,790 items by 3/31/15). Consequently, DOCCS program staff will have grown 8.4% (229 FTEs) from the program staff projected for FY 2014-15. We applaud this expansion of program staff.

This increase is long overdue, since program staffing declined at unacceptably high rates during the five-year period FY 2009-10 through FY 2013-14. With the increase funding for FY 2015-16, the percentage of the DOCCS personal services (PS) prison budget for program staff will rise to 9.6% of DOCCS PS budget compared to the rate of 8.9% of the PS DOCCS budget in FY 2013-14 and FY 2014-15. But this percentage is still less than the 9.90% to 9.95% of the PS budget which existed during the period FY 2008-09 through FY 2011-12. Similarly, even with the increases proposed in FY 2015-16, the amount of program staff will be 15.3% less than it was in March 2009, which is a greater decline than the reduction in DOCCS census, which has decreased by 13.1% during this time period. In summary, the increases in program staff is significant and justified, but further increases will be needed in the next few years to get back to where DOCCS was six years ago. Moreover, additional programming staff is required to meet the needs of the prison population. During our prison visits in the last several years, we have seen a tremendous number of program staff vacancies, long waitlists to get into basic mandatory programs, and a lack of programs other than the most basic mandatory requirements to help empower incarcerated persons and help prepare them to successfully return to their home communities. This year's program staff increase is a positive step and more will be needed in coming years.

One area of concern in the program services budget still remains despite the increase in staff. For the past several fiscal years, the amount of funding for non-personal expenses for program services has remained essentially flat. The $28M figure for this year is the same as in FY 2014-15. This amount is 30% less than the funds for programming provided in the FY 2010-11 budget. During our prison visits we are told by program participants and sometimes even by program staff that the supplies they need are limited and that equipment is sometimes outdated and in need of replacement. Given the expansion of program staff during FY 2014-15 and the increases proposed in FY 2015-16, it is unrealistic to expect that the cost of supplies and materials for programming will not increase. Moreover, as the educational system is changing to incorporate the new Common Core curriculum for New York State schools within the prisons, the need for new educational written materials and more and updated computers in the prisons is critical. The current non-personal service program budget would not appear to be adequate to meet all program needs for the incarcerated population.

Medical Services – The FY 2015-16 budget includes an almost $30M increase in the DOCCS health services budget. The major increase is contained in the supplies and materials portion of the healthcare budget, amounting to approximately $23M. The Assembly's analysis of the DOCCS budget indicates that this $23M increase will be used primarily to fund hepatitis C (HCV) treatment. With more than 6,000 HCV-infected patients in DOCCS custody, this

additional allocation is appropriate. The new HCV therapies are very effective (>90%) but also very expensive, costing $80,000 to $90,000 per patient. We strongly recommend approval of this increase because DOCCS has thousands of HCV-infected patients who could benefit from this treatment, and analysis by independent health experts has shown that this therapy is cost effective, even at the extraordinarily high rates being charged by the pharmaceutical companies. Efforts are being made to reduce the costs from state payers, and the Assembly should support efforts by the state to identify ways to purchase these drugs at discount rates. Concerning other non-personal health funding, there is also a $5.4M increase in medical contract services, representing a 4.85% increase in this item of the budget. Given the expanding health needs of the prison population, this increase is appropriate, and we remain concerned whether there are sufficient funds to meet the specialty care needs of the population given the fact that contract medical service funding is down 13% in the last five years, during a period when the population has declined only 10.7%.

Although the increase in medication funding is a welcomed development, other aspects of the healthcare budget are not as positive. Specifically, the funding for FY 2015-16 medical staff includes a reduction in medical staff from the levels approved in the FY 2014-15 budget. The Governor's budget indicates that there is funding for 1,644 health services staff, a level identical to the staffing as of March 2015. In the FY 2014-15 budget, however, the DOCCS medical staff was supposed to remain fixed at 1,664 positions. Consequently, as has occurred in each of the last several fiscal years, health services staff has declined during the budget year; in FY 2014-15 this has resulted in a loss of 20 more health items. Since March 2011, the medical staff has declined 309 positions, representing a reduction of 15.8%. In contrast, the DOCCS population has declined only 7.5% during this time period. It is very distressing that the medical staff has declined at a rate **two times** that of the population reduction. Throughout our prison visits, we are finding vacancies in crucial medical staff, including doctors, physician assistants and nurses, and in turn complaints from incarcerated persons about both access to care and the quality of care received. Instead of replacing these vacant items, it appears that DOCCS is eliminating health services positions to meet its budgetary constraints. These reductions in medical staff are inappropriate, particularly during a time when the DOCCS population is aging, requiring additional health services and the Department is about to initiate expanded HCV treatment, which requires close monitoring by DOCCS physicians and nursing staff.

Supervision of Incarcerated Population – The FY 2015-16 DOCCS budget for supervision of the incarcerated population contains a 3.75% increase in funding. Concerning staffing, the Governor's budget contains no increase in security staffing, but during the last fiscal year, DOCCS security staff was increased by 54 additional items above the projected 40-position increase in last year budget for security staff. Moreover, during the period from March 2009 to the projected staffing for FY 2015-16, security staff has declined only 10.1% while the DOCCS population has declined 13.1%. The reduction in security staff during this six-year period is substantially less than the reductions in each other category: support services (25.1%); correctional industries (20.7%); health services (16.6%) and program services (15.3%). This contrast is particularly disturbing because during this time 13 prisons have closed and many other housing units have been vacated, requiring less security staff to monitor the incarcerated population. The closing of housing units and prisons should have a larger impact on the security

staff than for other services, which are primarily impacted only by reductions in prison census, but not reductions in building security.

Support Services – The FY 2015-16 funding for support services ($382.4M) is slightly less than the amount proposed for last year's fiscal budget, but $1.8M more than what is expected to be expended during FY 2014-15. More importantly, the support staff will be further reduced this fiscal year to 2,677 items from the project 2,800 items that were proposed in the FY 2014-15 budget and down by a startling 25% from the staffing levels that existed in March 2009. During our prison visits, we uniformly hear concerns raised by staff and the population about the reductions in clerical and maintenance staff and the consequent problems the Department is experiencing with completing necessary records and repairing the aging facilities in which many persons are incarcerated. We are concerned that the significant reductions in support staff have resulted in a lessening of DOCCS ability to adequately maintain its records, process papers in a timely manner and maintain the physical plants of the 54 prisons in the state.

Additional Areas *Not* Included in the Proposed DOCCS FY2015-16 Budget

There are a variety of pressing prison issues with budget implications that are not included in the Governor's budget. The following provide a sample of some of the most important areas not included.

Solitary Confinement: Thousands of people in New York prisons and jails remain in solitary confinement, held 22-24 hours a day without any meaningful human contact or programs. Although the UN Special Rapporteur on Torture has said that holding any person in solitary beyond 15 day amounts to torture because of the devastating physical and psychological impacts, in New York people are regularly held for months, years, and even decades. The Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A. 4401 / S. 2659, would end the torture of solitary beyond 15 days for all people and create more humane and effective alternatives. As provided in the CA's budget testimony last year,[78] these changes in the use of solitary would reduce the DOCCS budget in the short, medium, and long term, and would require some repurposing of certain resources for additional alternative programming.

College Programs: Even though it is well known that college education is the most effective means of helping people transform their lives and decrease the likelihood of returning to prison, there are very limited college opportunities after the state ended TAP eligibility for incarcerated persons, and the U.S. ended Pell grants. The State needs to reinstate TAP in NYS prisons so that incarcerated people are able to access college education. At the very least, NYS needs to provide additional funding to expand existing college programs, provide more support for peer-led education, and provide technology-based access to college program opportunities.

Prison Closures: While NYS has closed 13 prisons in the last several years, the closed prisons have all been minimum and medium security prisons. Meanwhile, there are a number of prisons – particularly maximum security prisons – that have a long history of staff abuse and continue to operate in an abusive manner. For example, recent in-depth investigations carried out by the

[78] See: http://assembly.state.ny.us/write/upload/files/testimony/20140205/20140205-PublicProtection-Beck.pdf.

Correctional Association at three state prisons – Clinton,[79] Greene,[80] and Attica[81] – revealed systemic and brutal staff-inflicted physical assaults, verbal and racial harassment, threats, intimidation, and excessive use of punishment and solitary confinement. An underlying culture and environment of abuse – not a few individual bad actors – drive the dehumanization and brutalization taking place. This culture is undergirded and fueled by racism, staff impunity, a lack of meaningful programs, a history of violent repression and a reliance on force, punishment, and disempowerment. We call for the closing of Attica, and for other prisons as long as they remain open, the creation of effective accountability for abuses and a fundamental transformation of the culture and environment of punishment and violence.

[79] See: http://www.correctionalassociation.org/news/the-clinton-correctional-facility-report.
[80] See: http://www.correctionalassociation.org/news/the-greene-correctional-facility-report-2.
[81] See: http://www.correctionalassociation.org/news/ca-releases-updated-2014-report-on-conditions-at-attica-prison.