

ADVANCING A FAIR AND JUST AGE OF CRIMINAL RESPONSIBILITY FOR YOUTH IN NEW YORK STATE

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New York, a state long considered a leader in justice-related issues, is falling behind the vast majority of states on a critical issue – the age of criminal responsibility. While most states treat 16 and 17 year olds as juveniles, New York treats all 16 and 17 year olds as adults for criminal responsibility – if arrested after their 16th birthday, they are taken to adult court, spend time detained or do time in local adult jails and can be incarcerated in state run adult correctional institutions if sentenced to longer than one year.ⁱ

New York also treats youth ages 13, 14 and 15 who are accused of the commission of certain serious crimesⁱⁱ as “juvenile offenders.” New York’s juvenile offender statute transfers prosecution to the adult system, unless the case is waived down for determination in the family court.ⁱⁱⁱ Experts in the field suggest a more equitable and beneficial process retains original jurisdiction for serious juvenile crime in the juvenile court, where a hearing before a judge experienced in juvenile delinquency issues determines whether the case should be “waived up” to adult criminal court based upon evidence of the particular circumstances of the youth and the offense.^{iv}

Youth of color are represented in New York’s justice system in numbers that are disproportionately greater than their representation in the general population and that exceed any differences in offending rates. Youth of color experience differential treatment at each decision point in the criminal justice process that in turn amplifies their disproportionality among juvenile arrestees at later stages.^v In addition to exposure to harsher treatment in the adult system, youth of color are also at great risk of becoming systematically disadvantaged as an adult

SNAPSHOT OF NEW YORK YOUTH INVOLVED IN THE ADULT CRIMINAL JUSTICE SYSTEM

- During 2009, there were 47,339 youth ages 16 and 17 years arrested in New York State. Over half of those arrests (26,802) occurred in New York City.ⁱ
- During 2009, there were 7,391 youth admitted to county jails in New York State who were under the age of 18 years at admission (excludes New York City jail admissions): 2,883 youth age 16 years and 4,508 youth age 17 years.ⁱⁱ
- During 2008, there were 3,570 youth admitted to jails in New York City who were under the age of 18 years at admission: 1,277 youth admitted at age 16 years and 2,293 youth admitted at age 17 years.ⁱⁱⁱ
- On January 1, 2010, 687 youth ages 16 to 18 years were in the custody of the New York State Department of Correctional Services (DOCS).^{iv}
- On October 24, 2010, there were 5,726 youth under adult probation supervision in New York State who were under the age of 18 years at sentencing.^v

ⁱ NYS Division of Criminal Justice Services. Computerized Criminal History Oracle File (as of 10/20/2010).

ⁱⁱ NYS Commission of Correction. Local Correctional Facilities in New York State-2009 County Admissions by Age When Admitted.

ⁱⁱⁱ NYS Commission of Correction. Annual Report for New York City, 2008.

^{iv} NYS Department of Correction Services. Under Custody Report: Profile of Inmate Population Under Custody on 1/1/2010.

^v NYS Division of Criminal Justice Services. Office of Justice Research and Performance. Probationers Supervised as of 10/24/2010.

criminal record reduces lifelong opportunities for education, employment and housing.

Over the past decade, policies in many states regarding adolescent criminal behavior have significantly shifted, moving from a “get tough” approach to one that recognizes and emphasizes the diminished responsibility of

youth. A robust body of developmental research has shown that the adolescent brain is not as fully developed as the adult brain. In general, this limits youths' critical decision-making capacity, reasoning, impulse control, ability to resist peer pressure and understanding of risk.^{vi} This research is not suggesting that youth cannot distinguish right from wrong or that they should be exempt from punishment, but it does suggest that punishment should be proportionate to their diminished culpability. The family court was established in recognition of the need to treat youth differently – as responsible but less blameworthy by reason of their age and immaturity and to provide rehabilitation and age-appropriate services.

An ever growing body of research has also demonstrated that the “get tough” approach does not deter youth from further crime and in fact has negative consequences.^{vii} Strong evidence from a series of studies demonstrates that prosecuting juveniles as adults is not a deterrent to juvenile crime, as states where it is more common to try adolescents as adults do not have lower rates of juvenile offending. This research also shows that after trial and sentencing as adults, juveniles are more likely to re-offend sooner and for more serious offenses than juveniles who have remained in the juvenile justice system.^{viii}

The U.S. Supreme Court has determined that the penalties accorded juveniles who commit serious crimes should be different than adults. In 2005, the U.S. Supreme Court held in the landmark case of *Roper v. Simmons* that persons under the age of 18 could not be subject to capital punishment – juveniles have lessened culpability and are therefore less deserving of the most severe punishments. Justice Kennedy, writing for the majority, stated that a juvenile is not absolved of responsibility for his actions, but his transgression “is not as morally reprehensible as that of an adult.” In the recent decision *Graham v. Florida*, the Court followed that line of reasoning to hold that juvenile offenders cannot be sentenced to life without parole in non-homicide cases.^{ix} The *Graham* and *Roper* decisions were premised in part on the advancing science of adolescent psycho-social and brain development,^x a

science whose lessons extend to most juvenile offenders.

Soon New York could stand alone in its regressive treatment of youth accused of criminal activity. Currently, North Carolina is the only other state that continues to treat youth age 16 as adults. Connecticut, following a significant study of its juvenile justice system, enacted “raise the age” legislation in 2007. With phased implementation to permit and finance necessary systems change, the age of criminal responsibility was raised to 17 years in January 2010 and by July 2012 it will be raised to 18 years.^{xi} In deciding to enact this legislation, the Connecticut Joint Legislative Committee Report noted that, “[t]he vast majority of minors, however, could be better

held accountable in the juvenile system, where rehabilitative services have been proven to put youths back on track, rather than the adult system, an ideal environment to create career criminals.”^{xii} North Carolina has established a Youth Accountability Task Force to examine the issues of the age of criminal responsibility in the state and will submit its findings to the North Carolina General Assembly and the Governor by January 15, 2011. It is expected that raising the age of criminal

responsibility will be addressed in the upcoming North Carolina legislative session.

In 2008, Governor Paterson created the “Task Force on Transforming New York State’s Juvenile Justice System” to examine ways to improve New York’s juvenile justice system and to create a road map for the State’s ongoing reform agenda. This Task Force concluded that institutionalizing young people should be the choice of absolute last resort, reserved only for those who pose such a serious threat that no other solution would protect public safety. The Task Force did not address juveniles entering the adult criminal justice system.

New York has yet to begin the discussion in earnest regarding the age of criminal responsibility.^{xiii} For nearly the past 50 years, New York has left open the question of what the jurisdictional age for juveniles should be. In 1962, with the passage of the Family Court Act, the decision to establish the jurisdictional age at 16 years was made as a

“From a moral standpoint it would be misguided to equate the failings of a minor with the failings of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”
Roper v. Simmons

“temporary” fix until input from public hearings and research could better inform New York State law.^{xiv} We believe the time has come to gather the input and research necessary to address New York’s age of criminal responsibility.

Our alternative to treating youth as adults cannot rely on placing youth in juvenile facilities which the Governor’s Task Force referred to as “...harming its children, wasting money, and endangering its public.” Instead and as part of any inquiry into the age of criminal responsibility, there must be contemporaneous examination of the development of more effective strategies for preventing youth crime; preventing system penetration for youth who have committed minor offenses; supporting comprehensive, community-wide efforts to increase protective factors that promote positive youth development; and decreasing those factors that place youth at risk for delinquency. Serious consideration needs to be given to more cost effective strategies which yield far better results for youth and families in New York State. As demonstrated by Connecticut’s efforts to raise the age, this process is time and resource consuming and requires steadfast political determination. Yet, a more comprehensive and less punitive approach can counter the existing ineffective and harmful criminalization of youth that actually contributes to future crime and decreases public safety.^{xv}

What’s Next?

Full juvenile justice system transformation will not have truly begun unless and until New York commissions a task force to examine:

- (1) raising the age of criminal responsibility including the demographic, legal, safety, service delivery, policy and financial implications associated with any change;
- (2) the necessary systems’ reform to accommodate any change in the age of criminal responsibility, including, but not limited to, an examination of local departments of probation and social services, county

family courts, the availability of appropriate services in the community and the impact on current juvenile justice placement facilities;

- (3) the Juvenile Offender laws to provide for Family Court/Presentment Agency “waive up” to Criminal Court in place of the Criminal Court/District Attorney “waive down” procedures currently in place; and
- (4) the provision of adequate funding for community based juvenile justice programs to reduce juvenile crime rates along with the attendant fiscal and human costs to society.

Key stakeholders to contribute to the analysis must include the Office of Court Administration, Division of Criminal Justice Services, Office of Probation and Correctional Alternatives, Office of Children and Family Services, the educational community, local criminal and family court judges, defense counsels including public defenders and district attorneys, local commissioners of probation, social services, non-profit juvenile justice services providers, as well as experts in the fields of adolescent medicine and psychology, and criminal and juvenile justice.

In view of the foregoing, the Governor’s Children’s Cabinet Advisory Board, a non-partisan, independent, diverse group of experts, believes the time is now to commission a comprehensive study of New York’s justice system in order to determine a fair and just age of criminal responsibility. New York’s children deserve a system of justice that both holds them accountable for their behavior and allows them to learn from their mistakes and become productive citizens. This needs to be accomplished with the highest regard for public safety.

In addition to the Advisory Board members (page 4), many community leaders and advocates (page 5) support the establishment of a Governor’s Task Force and the implementation of a study that examines the implications for raising the age of criminal responsibility in New York State.

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* Support of this document represents the viewpoint of the individual and not necessarily the organization he or she represents.

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ENDNOTES

- ⁱ Thirty-eight states and the District of Columbia treat 17 year olds as juveniles. Less than 10 states continue to treat 17 year olds as adults. Illinois has recently amended its age of criminal responsibility to treat 17 year olds who commit misdemeanors as juveniles. Connecticut raised its age of criminal responsibility to 17 effective January 2010. By 2012, Connecticut will raise its age of criminal responsibility to 18. *OJJDP Statistical Briefing Book*. Available: http://ojjdp.ncjrs.gov/ojstatbb/structure_process/qa04101.asp?qaDate=2007. Released on October 31, 2009; Illinois Public Act 95-10310 effective January 1, 2010; Connecticut General Statutes section 46b-121.
- ⁱⁱ 13 year olds: murder in the second degree; a sexually motivated felony. 14 and 15 year olds: murder in the second degree (including the felony murder provisions if the youth is criminally responsible for the underlying felony); kidnapping in the first degree; arson in the first degree; arson in the second degree; assault in the first degree (only if the offense included the use of a deadly weapon or dangerous instrument or with intent to seriously and permanently disfigure the victim); manslaughter in the first degree; rape in the first degree (excluding the statutory rape provisions); criminal sexual act in the first degree (excluding statutory rape provisions); aggravated sexual abuse in the first degree; burglary in the first degree; burglary in the second degree; robbery in the first degree; robbery in the second degree (if the offense involves causing physical injury or displaying what appears to be a firearm); criminal possession of a weapon in the second degree, where the firearm is possessed on school grounds; attempted murder in the second degree; attempted kidnapping in the first degree; or a sexually motivated felony. Greene, J. 2010. *Juvenile Justice 101: A System Overview*. CLE Presentation. Albany, NY: NYS Division of Criminal Justice Services.
- ⁱⁱⁱ Criminal Procedure Law §§ 180.75, 190.71, 210.43, 220.10, 310.85, 330.25, 725.10
- ^{iv} Fagan, Jeffrey. 2008. "Juvenile crime and criminal justice: Resolving border disputes." *The Future of Children* 18(2): 11-48.
- ^v Austin, James, Kelly Johnson, and Maria Gregoriou. 2000. *Juveniles in Adult Prisons and Jails: A National Assessment*. Washington, DC: U.S. Institute on Crime, Justice and Corrections at the George Washington University and National Council on Crime and Delinquency; Juskiewicz, Jolanta. 2000. *Youth Crime/Adult Time: Is Justice Served?* Washington, DC: Building Blocks for Youth; Miller, Jerome. 1996. *Search and Destroy: African-American Males in the Criminal Justice System*. NY, NY: Cambridge University Press.
- ^{vi} MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *Less guilty by reason of adolescence* Issue Brief 3, (accessed 11/4/10 at http://www.adjj.org/downloads/6093issue_brief_3.pdf); Reyna, V. and F. Farley. 2006. "Risk and rationality in adolescent decision making." *Psychological Science in the Public Interest* 7(1); Steinberg, L. and E. Scott. 2003., "Less guilty by reason of adolescence." *American Psychologist* 58(12): 1-10; Scott, Elizabeth S. and Thomas Grisso. 1997. "Symposium on the Future of the Juvenile Court: The Evolution of Adolescence: A developmental Perspective on Juvenile Justice Reform." *Journal of Criminal Law & Criminology*, 88: 137-159.
- ^{vii} Centers for Disease Control and Prevention. 2007. Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System. *MMWR* 2007; 56(No. RR-9): [1-11]; Redding, Richard E. 2010. *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* Available <http://www.ojjdp.gov/publications/PubAbstract.asp?pubi=242419>.
- ^{viii} Fagan, Jeffrey. 2008. "Juvenile crime and criminal justice: Resolving border disputes." *The Future of Children* 18(2): 11-48. A study compared the recidivism rates of youth in New York and New Jersey. New Jersey, unlike New York, adjudicates youth ages 16 and 17 years who commit an offense in juvenile court. The study compared youth who had committed the same serious crimes with similar backgrounds and circumstances and found that youth prosecuted in the adult courts in New York were 85 percent more likely to be re-arrested for violent crimes and 44 percent more likely to be re-arrested for felony property crimes than those prosecuted in the New Jersey juvenile courts. Fagan, Jeffrey. 1996. "The comparative advantage of juvenile versus criminal court sanctions of recidivism among adolescent felony offenders." *Law & Policy*, 18: 77-112; MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. *The changing borders of juvenile justice: Transfer of adolescents to the adult criminal court*, Issue Brief 5, (accessed 11/4/10 at <http://www.macfound.org/atf/cf/%7BB0386CE3-8B29-4162-8098-E466FB856794%7D/ADJJTRANSFER.PDF>).
- ^{ix} *Roper v. Simmons*, 543 U.S.551, 568 (2005) citing *Thompson v. Oklahoma*, 487 U.S. 815, 853 (1988). *Graham v. Florida*, 560 U.S. ____ (2010).
- ^x Haider, Aliya. 2006. "Roper v. Simmons: The role of the science brief." *Ohio State Journal of Criminal Law* Vol. 3:369-377.
- ^{xi} Connecticut General Statutes section 46b-121.
- ^{xii} H. Ted Rubin, Juvenile or Adult Jurisdiction? Age Changes in the States, Juvenile Justice Update, December/January 2008, at 1, 2 (quoting Connecticut Juvenile Jurisdiction and Implementation Committee).
- ^{xiii} For the past several years, Assembly member Michele Titus has introduced legislation to raise the age of criminal responsibility for juvenile delinquents from 16 to 17 years. In 2010, Assembly Bill 5496 was introduced, but as in past years, never advanced out of Committee.
- ^{xiv} Sobie, M. 2007. *New York's Juvenile Delinquency Jurisdictional Age Limitation*. Memo to the New York State Bar Association Committee on Children and the Law; Sobie, M. 2010. "Pity the child: The age of delinquency in New York." *Pace Law Review*, 30 (3): 1061-1088. It is also important to note that New York remains one of only three states that has statutorily set the youngest age level for involvement in the juvenile justice system at age 7. While most state statutes are silent on the youngest age level, of the states that do set this minimum age 10 is the most common and only one state sets it (at age 6) below New York's minimum. *OJJDP Statistical Briefing Book*. Online. Available: http://ojjdp.ncjrs.gov/ojstatbb/structure_process/qa04101.asp?qaDate=2007. Released on October 31, 2009.
- ^{xv} Fagan, Jeffrey. 2008.